

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

**MICHIGAN HOUSE OF
REPRESENTATIVES
And MICHIGAN SENATE,**

Supreme Court No. 161377

Plaintiffs-Appellants,

**Court of Appeals No. 353655
Court of Claims No. 20-000079-MZ**

v.

**THIS APPEAL INVOLVES A
RULING THAT A PROVISION
OF THE CONSTITUTION, A
STATUTE, RULE OR REGULATIONS
OR OTHER STATE GOVERNMENTAL
ACTION IS INVOLVED.**


**GRETCHEN WHITMER, in her
official capacity as Governor for the
State of Michigan,
Defendant-Appellee,**

Patrick G. Seyferth (P47475)
Stephanie A. Douglas (P70272)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248)822-7800
seyferth@bsplaw.com
douglas@bsplaw.com
mckeever@bsplaw.com

Michael R. Williams (P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC 151 S.
Rose St., Ste. 707 Kalamazoo, MI 49007
(269) 820-4100
williams@bsplaw.com
dame@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

JOSEPH T. FROELICH (P 71887) 
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573
Froehlichj1@michigan.gov

JOHN F. BRENNAN, ESQ. (P26162)

Pro se

24001 Greater Mack Ave
Saint Clair Shores, MI 48080-1471
(586) 778-0900
brennanj@lawyermichigan.us

SAMUEL H. GUN, ESQ. (P29617)

Pro se

2057 Orchard Lake Rd
Sylvan Lake, MI 48320-1746
(248) 335-7970
gunneratlaw@comcast.net

ERIC ROSENBERG, ESQ. (P75782)

Pro se

25899 W 12 Mile Rd Ste 200
Southfield, MI 48034-8342
Phone: [248-821-9034](tel:248-821-9034)
Email: EJRlaw01@gmail.com

MARK P. BUCCHI, ESQ (P32047)

Pro se

2855 Coolidge Hy. Ste. 203
Troy, MI 48084
(248)282-1150
mbucchi@novakbucchi.com

MARTIN LEAF, ESQ. (P43202)

Pro se

19641 Mack Ave
Grosse Pointe Woods, MI 48236-
(248) 687-9993
leafmartin@gmail.com

MOTION TO DOCKET

NOW COME the undersigned, collectively self-designated as "The Intervenors" and move this Court under MCR 7.311 to accept for filing, docket and entertain our May 27, 2020 Emergency By Pass Application for Leave to Appeal (**Application**, herein), re-submitted herewith, stating as follows:

1. Intervenors seek to participate in this litigation, as they previously attempted in the Court of Claims (COC), by filing the attached Motion to Intervene and supportive Brief and Exhibits. **5/8/2020 Motion, attached.**
2. As we briefed before the COC, and again brief to this Court, we are, as licensed lawyers, threatened with severe and ongoing restrictions in the conduct of our professional services to our clients by several Emergency Orders (EO's) and accompanying FAQ's (sic) issued by the Defendant (Governor, herein), most prominently that we are allegedly obliged to refrain from leaving home to serve our clients unless we

"cannot perform work remotely or cannot comply with (our) ethical obligations" by complying with the Governor's manifold Stay Home Orders (SHO's). As this Court probably knows, the Governor's EO's and SHO's routinely include the proviso that willful violations shall constitute misdemeanors, or worse. **See for example, EO-2020-70 and EO-2020-96 FAQ's, attached to Intervenor's Application.**

3. Further, contrary to announcing any "rule of reason" in interpreting her Covid-19 related EO's and SHO's, and leaving lawyers the appropriate latitude, subject to social distancing considerations, to fulfill their unique professional duties to our clients, the Governor has published that she intends her every order to be construed "broadly, to prohibit in-person work that is not necessary to protect or sustain life." **See for example, EO-2020-70, attached to Intervenor's Application.** Hence, as our Application more fully describes, we, as licensed lawyers, are put in the legally unacceptable position of being required to, in effect, do the **least** amount of work we possibly can do, outside of our homes, faced with the dual threats of committing malpractice on one hand, and being charged with a misdemeanor on the other, if an enforcement agency, likely not a lawyer, decides that we have been "too diligent" in our services to our clients. **See Application, pp. 2, 21-22.** In contrast, our age-old professional duties include, indeed **begin** with, the duties to **never** "neglect a matter" entrusted to our care or fail to prepare, and to **always** act with diligence and promptness on our clients' behalf. **MRPC 1.1 & 1.3.**

4. As further briefed in our Application, while it appears obvious that we, like most lawyers, can easily comply with the standards of safety prescribed by the Governor in her more recent EO's concerning "offices" (handwashing, facial covering, six foot distancing, etc.), **our** offices are not accorded the same freedom to open and operate as many others,

since we, the proprietors of these offices, are allegedly restricted in our ability to even go to them. See **Application, pp. 2-4, 21-22, EO -2020-96 FAQ's, and EO-2020-97, p. 9, attached thereto.**

5. Hence, we Intervenors have personal standing to complain of any illegalities, constitutional defects, or other improprieties presented by the Governor's EO's and SHO's which purport to act after April 30, 2020 (Contested Orders, herein), **which are independent of the Legislature's more abstract, institutional concerns.** We and our clients are personally endangered by these Contested Orders and FAQ's. They stand to get less than our best efforts as lawyers, not to mention suffering all that is implied by the maxim "Justice delayed is Justice denied." We are threatened with criminal prosecutions. Other "offices" are not. Neither is any Legislator, to our knowledge. Hence, we have personal standing to oppose these orders. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). Whether it be by way of the threat of prosecution, or the threat of classroom violence, we share the same "real interest in the subject matter of the controversy" as the teachers in *Lansing* did.

6. We advanced our arguments as to the invalidity of the Contested Orders to the COC on/about May 8, 2020. **5/8/2020 Motion, attached.** Both the Legislature and Governor, through counsel, argued that our interests would be adequately represented by the Legislature, and objected to "delaying" the proceedings. **Governor's and Legislature's Responses, attached.** We disagreed, and pointed out the precise argument we sought and seek to advance, i.e. that the Emergency Powers of Governor Act, MCLA 10.31 et seq, enacted in 1945 (variously called the EPGA and 1945 Act) **does not empower any governor** to exercise "emergency" powers in the face of what the Covid-

19 outbreak clearly is, **an epidemic**. **Intervenor's Reply, p. 3**. This is an argument completely independent of the Legislature's arguments as to the geographically limited scope of gubernatorial powers, or their unconstitutionality (with which we largely agree, and do not propose to redundantly argue, as our pleadings make clear). We hereby waive **any** delay to these proceedings, and will restrict our oral argument to **one** Intervenor, if this Court so desires.

As our Application illustrates, we have since been able to further research and **confirm our theory**. **Application, pp. 9-19**.

7. The COC was persuaded to accept that the Legislature would adequately represent our position, and, even though the law favors intervention where appropriate, denied our intervention. **See Order 1, attached to Intervenor's 5/27/2020 Application**. However, our argument was never discussed in oral argument before the COC, nor addressed by the COC in its 5/21/2020 determination of the case. **See Transcript and Order 2, attached to Intervenor's Application**.

8. We have followed the Legislature in filing a Claim of Appeal with the Court of Appeals (COA), a few minutes before we filed our Application herein. That Claim has been tentatively accepted by the COA. However, the Legislature has moved this Court to rule on this dispute immediately, and we note that, should this Court rule before the COA does, any activity before the COA will be mooted, our independent objections to the Contested Orders along with them. **See Application, pp. 5-7**.

9. The economically and emotionally disastrous effect the Contested Orders have had on the entire Michigan economy are acknowledged by the Governor, and doubtlessly are known to this Court. **See EO-2020-97, p. 1**. As such, the **last** thing we would ask is to

have this Court await action by the COA before acting. Instead, we respectfully seek leave to by-pass appeal along **with** the Legislature, now. It cannot be said, this time, that we stand to delay these proceedings, since we first filed here, to our knowledge, before the Governor.

10. We have been informed, via email, by the Clerk of this Court that, because we were not granted leave to intervene before the COC, the Clerk believes we currently lack "standing" to seek a by-pass application herein. We file this motion in accordance with his indication of the proper procedure to follow to clarify this situation.

WHEREFORE, Intervenors pray this Court to allow our By-Pass Application to be filed, docketed and considered along with that of the Legislature.

May 29, 2020

Respectfully,

/s/ John F. Brennan, Esq.
JOHN F. BRENNAN, ESQ. (P26162)
Pro se

/s/ Mark Bucchi, Esq.
MARK P. BUCCHI, ESQ. (P32047)
Pro se

/s/ Samuel H. Gun, Esq.
SAMUEL H. GUN, ESQ. (P29617)
Pro se

/s/ Martin Leaf, Esq.
MARTIN LEAF, ESQ. (P43202)
Pro se

/s/ Eric Rosenberg, Esq.
ERIC ROSENBERG, ESQ. (P75782)
Pro se

AFFIDAVIT OF SERVICE

The undersigned affirms that this pleading and all attachments have been served on all counsel of record, and counsel by way of the Court's e-filing system, or email.

May 29, 2020 /s/ Mark Bucchi, Esq.
MARK BUCCHI, ESQ. (P32047)

ATTACHMENTS TO MOTION*

5/8/2020 Motion in COC

Governor's Response to 5/8/2020 Motion

Legislature's Response to 5/8/2020 Motion

Intervenors' Reply

* Intervenor's 5/27/2020 Application is re-submitted WITH this pleading, but not attached.

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,

Plaintiffs,

Case No. 20-000079-MZ

v.

Hon. Cynthia Stephens

GRETCHEN WHITMER, in her
official capacity as Governor for
the State of Michigan,

Defendant.

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Michael R. Williams(P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC 151 S.
Rose St., Ste. 707
Kalamazoo, MI 49007 (269)
820-4100
williams@bsplaw.com
dame@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov


JOSEPH T. FROEHLICH (P 71887)
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573
Froehlichj1@michigan.gov

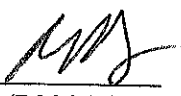
INTERVENORS' MOTION TO INTERVENE


NOW COME the undersigned applicants for permissive intervention and move this Court, under MCR 2.209 (B) for permission to intervene as parties Plaintiff herein. This Motion is based upon the attached Brief and Appendices.

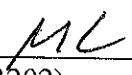
May 8, 2020


Respectfully submitted by,

/s/ John F. Brennan, Esq. 
JOHN F. BRENNAN, ESQ. (P26162)
Pro se
24001 Greater Mack Ave
Saint Clair Shores, MI 48080-1471
(586) 778-0900
brennanj@lawyermichigan.us

/s/ Mark Bucchi, Esq. 
MARK P. BUCCHI, ESQ (P32047)
Pro se
2855 Coolidge Hy. Ste. 203
Troy, MI 48084
(248)282-1150
mbucchi@novakbucchi.com

/s/ Samuel H. Gun, Esq. 
SAMUEL H. GUN, ESQ. (P29617)
Pro se
2057 Orchard Lake Rd
Sylvan Lake, MI 48320-1746
(248) 335-7970
gunneratlaw@comcast.net

/s/ Martin Leaf, Esq. 
MARTIN LEAF, ESQ. (P43202)
Pro se
19641 Mack Ave
Grosse Pointe Woods, MI 48236-2535
(248) 687-9993
leafmartin@gmail.com


/s/ Eric Rosenberg, Esq. 
ERIC ROSENBERG, ESQ. (P75782)
25899 W 12 Mile Rd Ste 200
Southfield, MI 48034-8342
Phone: [248-821-9034](tel:248-821-9034)
Email: EJRLaw01@gmail.com

AFFIDAVIT OF SERVICE

The undersigned affirms that this pleading has been served on all counsel of record by email, in accordance with the Court's temporary Covid-19 related orders.

T

May 8, 2020

/s/ Mark Bucchi, Esq. 
MARK BUCCHI, ESQ. (P32047)

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,

Plaintiffs,

Case No. 20-000079-MZ

v.

Hon. Cynthia Stephens

GRETCHEN WHITMER, in her
official capacity as Governor for
the State of Michigan,

Defendant.

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Michael R. Williams(P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC 151 S.
Rose St., Ste. 707
Kalamazoo, MI 49007 (269)
820-4100
williams@bsplaw.com
dame@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

JOSEPH T. FROEHLICH (P 71887)
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573
Froehlichj1@michigan.gov

INTERVENORS' BRIEF IN SUPPORT OF MOTION TO INTERVENE

I. INTRODUCTION

Intervenors seek leave to participate in this action in order to make it clear that, although they generally agree, enthusiastically, with the Legislature's views that **their** statutory and constitutional prerogatives have been violated by the Governor, it is important to remember that over 35,000 licensed Michigan lawyers, many of whom can easily "socially distance" themselves from staff and visitors alike, and all of whom have clients who need and deserve their assistance, also have an interest in being free of unlawful and arbitrary strictures on our personal and professional activities.

This is not to denigrate any number of other professionals whose activities the Governor has similarly deemed "non-essential", but who perform valuable functions in our society and could also perform them as safely as lawyers could practice their profession. We simply speak on our own behalf, and do not presume to speak for them. Our purpose is to remind all concerned that the Constitution and laws of Michigan exist in equal part to protect the private citizens and businesses of this State, not merely to employ "public officials" and divide political turf among them.

II. FACTS

Intervenors are lawyers in good standing in this state, who maintain practices in various parts of the State¹. Some are small or solo practitioners. All serve a wide range of clients, in civil and/or criminal matters, many of which were ongoing when the Governor began exercising the "emergency" powers that produced this proceeding. None of our clients have determined that they no longer want their interests protected. However, as made clear by the Governor's EO 2020-70 FAQ's, attached, **she** deems it "reasonable and necessary" to declare that, regardless of

¹ Mr. Rosenberg, a non-owner employee of a Southfield firm (litigation attorney), joins solely in his individual capacity, not as a spokesman for his firm.

how few staff we require to come into our offices, how few "in person" encounters we have with anyone, how well we observe the now ubiquitous Six Foot Rule, and how urgently our clients desire legal advice, representation, and results, our public duty is largely limited to telling our clients to stand down, to ourselves go home, and to wash our hands "frequently", until the Governor issues her personal "all clear" at some unknown and unknowable date in the future. For the reasons described herein, we beg to differ².

Generally, we agree with everything submitted on behalf of the Legislature. We wish, however, to add the following.

III. MCR 2.209 (B)

MCR 2.209 (B) permits permissive intervention when the proposed intervenors' claim or defense present a common question of law or fact with those presented in the "main action". In this case, the vast majority of the issues of fact and law advanced in the main action are virtually identical to those presented by the Intervenor, with the exception that the Intervenor act in their own right as citizens and licensed professionals whose personal freedom is being infringed by the contested Emergency Orders (EO's) issued by the Governor, and whose businesses are being threatened by them.

IV. STATUTORY AUTHORITY

There are two potential sources of statutory authority for the Governor's numerous contested EO's and other declarations. One is the Emergency Management Act, MCLA 30.401 et seq, initially enacted in 1976 (1976 Act, herein). The other is the Emergency Powers of

² Intervenor are certainly aware and appreciative of the many accommodations extended by the Michigan Supreme Court and many lower courts to relax scheduling orders and filing deadlines, as we all cope with the strictures imposed by the Governor. We are, nonetheless, equally mindful of the eternal truth given to us by Prime Minister Gladstone: "Justice delayed is justice denied."

Governor Act, MCLA 10.31 et seq, enacted in 1945 (1945 Act, herein). For the reasons discussed below, neither now authorizes the Governor's contested EO's.

A. STATUTORY INTERPRETATION

In general, unambiguous statutes are to be enforced as written, without a court substituting its own sense of public policy for that of the Legislature. *Kenneth Henes Special Projects Procurement, Mktg. & Consulting Corp. v. Continental Biomass Indus. (In re Certified Question)*, 468 Mich. 109 (2003); *Charter Twp. of Shelby v. Papesh*, 267 Mich. App. 92 (2005). However, courts are obliged to avoid interpretations of statutes that would render them unconstitutional or otherwise invalid. *General Motors v Appeal Board of Michigan Unemployment Compensation Commission*, 321 Mich 724 (1948); *Pigorsh v Fahner*, 386 Mich 508 (1972). A statute will only be given an interpretation leading to "mischievous" consequences when none other is possible. *In re Lambrecht*, 137 Mich 450 (1904).

When general terms are used in a statute, intermixed with more specific terms, the doctrine of *in ejusdem generis* applies to "confine" the interpretation of the general terms by the specific ones, particularly in cases involving penal statutes. *People v Powell*, 280 Mich 699 (1937). This rule will be particularly applicable to the analysis of the 1945 Act, discussed below.

If more than one statute arguably relates to the same general topic, they may be considered *in pari materia*. *Houghton Lake Area Tourism & Convention Bureau v. Wood*, 255 Mich App 127 (2003). The general duty of the court is to harmonize such statutes, giving effect to each, within its scope of reference. *Rowley v. Garvin*, 221 Mich App 699 (1997). However, if harmony is not possible, the later statute controls, or is construed as an exception to or refinement of the older statute. *Detroit Bd. of Education v. Parks*, 417 Mich. 268 (1983). Obviously, if the court concludes that the subject statutes address **different** topics, as in "riots" versus "epidemics", this rule does not apply.

B. THE 1976 ACT

Without question, this statute does empower a governor to react to enumerated events that constitute "disasters" or "emergencies".

MCL 30.402 defines various key terms, which follow:

(e) "Disaster" means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, **epidemic**, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders.

(h) "Emergency" means any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and **the public health and safety**, or to lessen or avert the threat of a **catastrophe** in any part of the state.

MCLA 30.402. Emphasis added.

The term "catastrophe" is not defined in the 1976 Act. Thus, since the term "epidemic", which clearly describes the current Covid-19 outbreak, is a "disaster" as to which the Governor derives authority under the 1976 Act, that Act controls the Governor's unilateral powers in the face of this epidemic. Under the 1976 Act, the Governor would be entitled to proclaim a "state of disaster", defined as follows:

(p) "State of disaster" means an executive order or proclamation that activates the disaster response and recovery aspects of the state, local, and interjurisdictional emergency operations plans **applicable to the counties or municipalities affected**.

MCLA 30.402 (2) (p). Emphasis added.

Conceivably, since this viral outbreak does endanger public health, the Governor could also declare a "state of emergency" under the 1976 Act, defined as follows:

q) "State of emergency" means an executive order or proclamation that activates the emergency response and recovery aspects of the state, local, and interjurisdictional emergency operations plans **applicable to the counties or municipalities affected.**

MCLA 30.402 (2) (q). Emphasis added.

As it turns out, that is a distinction without a palpable difference, because gubernatorial power in the face of both "disasters" and "emergencies" is limited in substantially identical terms.

MCL 30.403 (3) provides as follows as to states of "disaster":

(3) The governor shall, by executive order or proclamation, declare a **state of disaster** if he or she finds a disaster has occurred or the threat of a disaster exists. The state of disaster shall continue until the governor finds that the threat or danger has passed, the disaster has been dealt with to the extent that disaster conditions no longer exist, or until the declared state of disaster has been in effect for **28 days**. After 28 days, the governor shall issue an executive order or proclamation declaring the state of disaster terminated, **unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature.**

The alternative provision as to states of "emergency" is identically crafted:

(4) The governor shall, by executive order or proclamation, declare a **state of emergency** if he or she finds that an emergency has occurred or that the threat of an emergency exists. The state of emergency shall continue until the governor finds that the threat or danger has passed, the emergency has been dealt with to the extent that emergency conditions no longer exist, or until the declared state of emergency has been in effect **for 28 days**. After 28 days, the governor shall issue an executive order or proclamation declaring the state of emergency terminated, **unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature.**

MCLA 30.403 (4). Emphasis added.

Thus, whether we regard the current situation to constitute a "disaster" or an "emergency", it is clear that, when the Governor's original orders, extended by the consent of the Legislature, reached the end of their extended term, on April 30, 2020, the Governor's authority to

unilaterally issue either "disaster" or "emergency" related orders and decrees expired. As noted below, one of the contested EO's admits as much.

Nothing in the 1976 Act requires the Legislature to initiate litigation to enforce these statutory sunset provisions. Nothing authorizes a Governor to declare a second state of "disaster" or "emergency" regarding the same "epidemic" if the Legislature refuses to consent to an extension of gubernatorial powers. Quite simply, as of April 30, 2020, the Governor's powers under the 1976 Act plainly and automatically expired because the Legislature refused to extend them.

For that reason, unless and until the Legislature relents and re-authorizes her activities, the Governor must find independent emergency/disaster powers under the 1945 Act, or she is, as a matter of statutory law, powerless to act unilaterally, much less issue orders that purport to criminalize otherwise legal behavior of Michigan residents. If she cannot, her contested EO's, whether issued before, on or after April 30, 2020, and purporting to extend well into May, are devoid of legal effect, and disobedience to them cannot be punished, even if they are otherwise "reasonable" and sound pieces of public health advice.

C. THE 1945 ACT. MCLA 10.31 et seq

The Governor clearly contends that, because the 1945 Act features no 28 day sunset provision as appears in the 1976 Act, she enjoys temporally unlimited powers to issue EO's premised on the ongoing "emergency", the Covid-19 epidemic. This claim is inaccurate. The 1945 Act confers no powers on the Governor in the context of this or any epidemic.

By way of preface, the 1945 Act was enacted almost 30 years after the Spanish Flu pandemic. As the Legislature has aptly observed, it was also enacted in the more recent wake of race riots in Detroit. Therefore, it cannot be understood as a hurried response to the Spanish Flu pandemic, nor can it be thought of as having been written without the Legislature's knowing of

such things as riots and epi- and pan-demics, or being able to describe the types of threats they sought to address with this statute. The question becomes whether the 1945 Act was written to confer emergency powers on Michigan's governors in the face of **epidemics**. A review of the 1945 Act, in light of the above rules of construction, demonstrates that it does **not** empower a governor in cases of epidemics, and certainly does not accord governors temporally and geographically unlimited powers in the face of such events.

MCLA 10.31 (1) starts by listing the events that could trigger a governor's emergency powers. It includes such concrete and abstract events as "crisis", "disaster", "rioting" or other "similar" public emergencies, or the reasonable apprehension that such an event may soon occur. "Epidemic" isn't on the list. Neither is "disease". Neither of those resembles a riot, either. Thus, when seeking to interpret the generic terms ("crisis" and "disaster") the concrete term, "rioting" guides the interpretation. *People v Powell*, 280 Mich 699 (1937).

Next, the 1945 Act describes the people who can seek a governor's emergency intervention. The list is short. Mayors, county sheriffs, or the state police. MCLA 10.31(1). None of these are public health officials. Clearly, all of these officials are primarily tasked to fight crime, not disease. Conversely, the statute doesn't authorize **any** public health official to seek these emergency orders, or take any actions to guard the public **health**. Thus, it is counter-intuitive to assume that the 1945 Act was intended to empower a governor to react to outbreaks of disease, and could be triggered by local or state officials having little or nothing to do with public health, especially since it provides **no** role for Michigan's entire private and public medical communities, and public health officials. This passage clearly augers that the emergency powers enacted in 1945 were geared to helping local law enforcement cope with outbreaks of localized crime and violence, not outbreaks of disease.

The 1945 Act then authorizes the governor to “designate the area involved”. MCLA 10. 31(1). It does not indicate or suggest that this “area” can include the entire state. Instead, the context strongly implies that the “area” is a defined geographical **part** of this state where the rioting or other “similar” emergency is actually happening, or foreseen.

Next, the statute authorizes the governor to issue orders that are objectively reasonable, and that the governor subjectively believes to be “necessary” to protect life, property, and diffuse the emergency “within the affected area”. MCLA 10. 31(1). Certainly, life and property are endangered by events like riots, looting and the like. Life is also endangered by diseases. Property generally is not. So, the Governor’s interpretation is implausible, given that the word “disease” doesn’t appear anywhere in this statute.

Next comes the authorization of the types of topics emergency orders may address. MCLA 10.31(1). They include “control of traffic”, which certainly would include not letting people drive to or from the places where fires are **burning, rioting and looting** is going on, but doesn’t appear to include “every place in Michigan except your own garage, driveway, or stretch of street outside your house”. The order may control which buildings in “the affected area” that people can enter, leave and use. This could conceivably mean one’s own place of business, but that language has never been so interpreted by any Michigan court of record. The orders may also control “places of amusement”, which obviously does not include every “nonessential” business in the State.

The 1945 Act does permit some control over public assembly in public places, which, given the First Amendment, carries with it certain obvious limitations. It does **not** say anything about how many guests one may have over to socialize at one’s home, or come to one’s office to consult, much less how one goes about travelling around a golf course. It allows establishing a

“curfew”, which has a clear application in the context of riots and looting, but has never been interpreted to mean a round the clock house arrest.

The 1945 Act also allows control of alcoholic beverages which, like marijuana, the current Governor has taken pains **not** to limit. Finally, it permits limitations on explosives and flammable liquids. These are easy to understand terms. Pipe bombs and Molotov cocktails.

Still, not a single mention of “disease”, “epidemic” or “pandemic” appears.

MCLA 10.31 (2) doesn’t add much to understanding what kind of events governors can treat as “emergencies”. MCLA 10.31 (3) disallows gun-grabbing, which obviously has a lot to do with the balance between controlling civil unrest and the Second Amendment, but not with fighting viruses not originating in the United States, however widespread they may become.

Nothing in this Act describes a governor getting input from public health officials and “experts”, diagnostic medical testing, drugs, medical “modeling”, “public health”, “public health care systems” or anything else that would suggest that this statute is intended to authorize “emergency” lockdowns of people and businesses to slow the spread of any disease. It doesn’t even mention hospitals.

MCLA 10.32 provides for broad interpretation of the statute, to allow governors to do what is needed to diffuse the emergencies **actually envisioned by the statute**. Of course, if infectious disease outbreaks are **not** such “emergencies”, even “broad interpretation” won’t sustain this governor’s orders. This section references “the police power of the state”. It doesn’t mention “infectious diseases” nor “contagions” nor public health crises, anywhere.

Hence, it would take a powerful stretch of **mis**-interpretation to conclude that, in 1945, the Legislature empowered Michigan’s governors to indefinitely quarantine the entire state, and

all its practicing lawyers, to fight a disease that is largely concentrated³ within one, limited region, Metro Detroit. In fact, the word "quarantine" doesn't appear anywhere in the 1945 Act, either. It is thus clear that **none** of the current Covid-19 "Stay at Home" orders and similar EO's that infringe on millions of people's right to socialize, conduct business and hold their jobs, are actually authorized by The 1945 Act, because it does **not** appear that the statute was intended to authorize gubernatorial interventions of a mandatory nature to curb the spread of **any** disease.

Further, if the 1945 Act could be read as the Governor claims, these statewide lockdowns could be unilaterally enacted by any governor any time the cold and flu season appeared to be waxing. For that matter, there is no provision in the 1945 Act for any other branch of Michigan Government to intervene on the quarantined citizenry's behalf. Michigan's governors would have plenary, unlimited, dictatorial powers at their fingertips, simply by declaring that an outbreak of any one of many common infectious diseases constituted an "emergency". As the Legislature has briefed, this would be an absurd and plainly unconstitutional reading of The 1945 Act, one which this court is obliged to avoid. *General Motors v Appeal Board of Michigan Unemployment Compensation Commission*, 321 Mich 724 (1948); *Pigorsh v Fahner*, 386 Mich 508 (1972).

V. THE CONTESTED EO'S

Given the above, the analysis of the Governor's contested EO's becomes fairly straightforward. All five, and one of the Governor's FAQ publications, are attached hereto.

A. EO 2020-66

We will, for the most part, ignore the editorializing that occupies the first 4-5 pages of this EO. In the end, the Governor grudgingly concedes the point that, under the 1976 Act, a

³ As of 5/5/2020, per the state's website, 69% of Michigan's 44,397 total cases, and 80% of its 4,179 fatalities, were found in Wayne, Oakland and Macomb Counties. Certain smaller "hot spots" have also arisen elsewhere.

governor cannot exceed 28 days of emergency orders without the Legislature's approval. She accordingly declared her EO 2020-43 rescinded, although, as noted above, the same legal result was actually accomplished by the stroke of midnight on April 30, 2020.

As far as the Governor's prefatory comments, we will offer a very few observations, to the extent they relate to the 1976 Act.

Under The 1976 Act, if a governor wishes to acquire power for more than 28 days, it is the duty of a governor to essentially "make the case" for prolonging the governor's emergency powers to the Legislature's satisfaction. In the legal world, "making a case" requires considerably more than the bald assertion that un-named and un-elected "public health experts" have been consulted. It requires more than vague references to "some counties" experiencing spikes in new cases. And, with due respect, the Governor's honest admission as to the enormous and growing economic harm caused by her various lockdown orders hardly "makes the case" for continuing them indefinitely, all over the State. It is also well to note that Florida, a state with at least twice the population of Michigan, and storied for its large senior population, had, as of May 1, 2020, confirmed roughly 8,000 fewer cases than we have in Michigan, and suffered a third of the deaths we have, **without** imposing a statewide lockdown. Hence, bald assertions that open-ended Stay Home orders are the one and only "scientific" way to protect Michigan's public health cannot be taken at face value.

In all, this EO acknowledges that, for purposes of the 1976 Act, the Governor's Covid-related emergency powers ended when April did. Nothing she wrote "makes the case" to re-instate them, without considerably more open disclosure as to her plans to re-open this state, on a region-by-region and activity-by-activity, basis, with all deliberate speed. And, of course, the relevant tribunal for determining whether her case is made is the Michigan Legislature, not any

court. It is **its** consent that is required to extend the states of disaster or emergency, not any judge's. MCLA 30.403.

B. EO 2020-67

Here, the Governor claims power to address the Covid-19 pandemic under the 1945 Act. For the reasons outlined above, this is a total canard. The 1945 Act accords no governor heightened powers in the face of health crises, epidemics or pandemics.

C. EO 2020-68

This EO is truly remarkable, in that it invokes the 1976 Act as authority, and then pretends to declare a **second** state of emergency/disaster arising from the **same** emergency/disaster the Governor had just admitted, in EO 2020-66, she no longer had emergency powers to address. The 1976 Act clearly accords **no** governor the power to circumvent a legislative refusal to extend powers to address a particular emergency/disaster by simply pretending to declare a new one.

This EO was not only legally vacuous, it was childish. It also implicitly acknowledges that the 1945 Act would be a weak legal reed for the Governor to lean on. To permit it would be to allow for an impermissibly "mischievous" consequence. *In re Lambrecht*, 137 Mich 450 (1904).

D. EO 2020-69

This EO purports to rescind EO 2020-43, issued some weeks ago, and replace it with a continued set of restrictions primarily regarding food services. It may well include some prudent and sound measures concerning an activity that is recognized as particularly risky in the context of this pandemic, face to face dining out near many other people. Unfortunately, for the very reasons noted above, the Governor's predicate for issuing **any** emergency/disaster orders relied on the Legislature extending her powers past April 30, 2020, which it **refused to do**.

E. EO 2020-70

This order invokes both Acts, and purports to extend the Governor's prior Stay at Home Orders (SHO's) to May 15, 2020, at which point these SHO's will be nearly two months old, and counting. Obviously, this Order has no more statutory validity than the others referenced herein.

As it relates to Intervenor's, though, these EO's and SHO's suffer from the additional flaw of being patently arbitrary, and endangering a traditional⁴ right of citizens everywhere, the right to obtain legal counsel in the face of the often time-sensitive transactions and legal disputes they encounter. For example, EO 2020-70 allows for real estate agents to resume most of their activities, which almost inevitably involve personal contact with people who are not members of the realtors' households, but does not allow lawyers to return to their offices, even if they work alone, or employ only family members. It should be no surprise that solo practitioners, small, and even larger firms can and do employ the whole panoply of federally recommended distancing strategies, ranging from mask and glove-wearing, to hand-washing, to standing far away from others, to limiting in-office meetings, to all manner of telecommunications, both audio and video, many of which are referenced throughout the Governor's many edicts. Hence, lawyers and law firms engaging in all these public health conscious practices in the relative isolation of their respective offices almost certainly pose a smaller risk than those presented by realtors, lawn crews, marijuana dispensers, workers at laundromats and motels, bicycle repairmen, golf course cashiers, everyone at Uncle Ed's and Jiffy Lube, and so on⁵. Yet, as asserted in the Governor's EO 2020-70 FAQ's, whenever lawyers, in the service of their clients, leave home to go to their offices, however alone and carefully, they become potential criminals. This is patently absurd, particularly since every SHO the Governor has issued explicitly

⁴ And, in some instances, constitutionally guaranteed.

⁵ Intervenor's are certainly not insinuating that all these businesses should be shut down by any governmental edict. We'd simply like to join them in the safe pursuit of our own profession.

disclaims the intent to interfere with the operation of the State's judicial system. **See EO-2020-70, para. 17, for example.** How that can be accomplished when 35,000 officers of said courts are effectively under house arrest is a daunting question.

In all, the above five Orders (and whatever others the Governor may decide to issue while this case pends) all lack any statutory underpinnings and ignore the demonstrated fact that **no** governor is entitled to indefinite, evergreen dictatorial powers. Managing the Covid-related emergency/disaster under the Michigan Constitution and only relevant statute, the 1976 Act, requires the Governor and Legislature to act on a collaborative basis, and, one would hope, would focus on how to restore **all** the people of this State to their prior levels of social and economic liberty and freedom as soon as possible. In their wisdom, the Legislature's and Governor's predecessors in 1976 determined, presciently, it turns out, that, in the face of epidemics and other disasters, a governor should be accorded a reasonable time (i.e. 28 days) to act unilaterally and expeditiously **but, after that reasonable time**, the governor must defer to and satisfy the Legislature, the People's designated representatives, of the wisdom of his or her chosen path forward.

Simple principles of republican governance would also dictate that, instead of invoking un-named and un-elected "experts", the government officials who would limit the freedoms and activities of their fellow citizens must explain in all open detail what situations require these restrictions, where they require restrictions on personal freedoms and to what extent, and how the government plans to remove the restrictions **with all deliberate speed**. What we have received from our Governor so far falls miles short of such openness and legal humility.

VI. THE SAFE START PLAN

Fortuitously on May 7, 2020, aside from illegally extending the statewide SHO to May 28, 2020, and thereby disrupting every 2020 holiday from Easter, to Mother's Day and, now,

Memorial Day, Defendant unveiled what she proposes as the legally enforceable plan for re-opening business and social activities in the state, her "Safe Start" plan. **Attached.** This 15 page document claims that the re-opening will take place as the Defendant consults with "experts" and "business leaders" none of whom are elected and, more disturbingly, none of whom are **named**. The people can currently know the names of their Legislators. It appears the people with whom Defendant proposes to share the most comprehensive and intrusive lawmaking enterprise of this century, to the exclusion of the peoples' elected representatives, will also remain, for now, **anonymous!**

Any number of references are made to "critical indicators" like positive tests, hospitalizations and the like, and, predictably, the Plan indicates that "low" levels are required for the state to progress to near normalcy, in terms of the removal of restrictions. But nowhere does the Defendant indicate what, in concrete numerical terms, "low" is.

Similarly, Defendant indicates that the process will be "gradual", and rely on "sustained" periods of lowering indicators. What do "gradual" and "sustained" mean, in terms of days, weeks, or months? Defendant does not say. No even rough estimate appears in this 15 page brochure, which Defendant announces as the effective law of Michigan's recovery from this pandemic driven state of emergency. The document simply represents a 15 page open letter stressing that (a) Defendant deems herself to be indefinitely in control of every aspect of how 9.5 million people will live their lives in this state, until (b) she and a team of unelected players to be named later decide otherwise.

The Defendant's Safe Start Plan inadvertently but plainly proves every Constitution-based claim advanced by The Legislature, and starkly reveals how tyrannical Defendant's aspirations actually are. Small wonder that part of the Plan is to try to lock Michigan's 35,000 lawyers in their homes for as long as possible!

VII. CONCLUSION

"The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority." *Township of Lake v Millar*, 257 Mich 135 (1932). As such, in the absence of a new legislative endorsement under the 1976 Act, the Governor's contested EO's have no legally binding force as to any Michigan resident, or business, including Intervenors and their clients. This is not to argue that the entire State should immediately break out in a series of crowded, raucous block parties and bacchanalia. It is to say that, until the Governor seeks and obtains the Legislature's approval of a safe and hopefully speedy plan of return to normalcy, all Michiganians are **and should be** free to prudently pursue their business and other interests.

May 8, 2020

Respectfully submitted by,

/s/ John F. Brennan, Esq.

JOHN F. BRENNAN, ESQ. (P26162)

Pro se

24001 Greater Mack Ave

Saint Clair Shores, MI 48080-1471

(586) 778-0900

brennanj@lawyermichigan.us

/s/ Samuel H. Gun, Esq.

SAMUEL H. GUN, ESQ. (P29617)

Pro se

2057 Orchard Lake Rd

Sylvan Lake, MI 48320-1746

(248) 335-7970

gunneratlaw@comcast.net

/s/ Mark Bucchi, Esq.

MARK P. BUCCHI, ESQ (P32047)

Pro se

2855 Coolidge Hy. Ste. 203

Troy, MI 48084

(248)282-1150

mbucchi@novakbucchi.com

/s/ Martin Leaf, Esq.

MARTIN LEAF, ESQ. (P43202)

Pro se

19641 Mack Ave

Grosse Pointe Woods, MI 48236-2535

(248) 687-9993

leafmartin@gmail.com

/s/ Eric Rosenberg, Esq.

ERIC ROSENBERG, ESQ. (P75782)

25899 W 12 Mile Rd Ste 200

Southfield, MI 48034-8342

Phone: [248-821-9034](tel:248-821-9034)

Email: EJRLaw01@gmail.com

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,
Plaintiffs,

v.

GRETCHEN WHITMER, in her
official capacity as Governor for the
State of Michigan,

Defendant.

Case No. 20-000079-MZ

Hon. Cynthia Stephens

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400 Troy, MI
48084
(248) 822-7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

JOSEPH T. FROEHLICH (P 71887_)
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573

Froehlichj1@michigan.gov Michael
R. Williams P79827) Frankie A.
Dame (P81307)
Bush Seyferth PLLC
151 S. Rose St., Ste. 707
Kalamazoo, MI 49007 (269) 820-
4100 williams@bsplaw.com
dame@bsplaw.com

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

INTERVENORS' APPENDICES

THE OFFICE OF GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

Executive Order 2020-66 (COVID-19)

EXECUTIVE ORDER

No. 2020-66

Termination of the states of emergency and disaster declared under the Emergency Management Act in Executive Order 2020-33

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply; dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.



On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.



These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.



So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.



The Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., provides that "[t]he governor shall, by executive order or proclamation, declare a state of emergency" and/or a "state of disaster" upon finding that an emergency and/or disaster has occurred or is threatening to occur. MCL 30.403(3) & (4). The Emergency Management Act further provides that a declared state of emergency or disaster shall continue until the governor finds that the threat or danger has passed, the [disaster/emergency] has been dealt with to the extent that [disaster/ emergency] conditions no longer exist, or until the declared state of [disaster/ emergency] has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of [disaster/ emergency] terminated, unless a request by the governor for an extension of the state of [disaster/emergency] for a specific number of days is approved by resolution of both houses of the legislature. [/d/]

For the reasons set forth above, the threat and danger posed to Michigan by the COVID-19 pandemic has by no means passed, and the disaster and emergency conditions it has created still very much exist. Twenty-eight days, however, have elapsed since I declared states of emergency and disaster under the Emergency Management Act in Executive Order 2020-33. And while I have sought the legislature's agreement that these declared states of emergency and disaster should be extended, the legislature—despite the clear and ongoing danger to the state—has refused to extend them beyond today.

Accordingly, acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. The state of emergency declared under the Emergency Management Act in Executive Order 2020-33 is terminated.
2. The state of disaster declared under the Emergency Management Act in Executive Order 2020-33 is terminated.



Given under my hand and the Great Seal of the State of Michigan.



MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN



OFFICIAL WEBSITE OF MICHIGAN.GOV

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

**Executive Order 2020-67 (COVID-19)****EXECUTIVE ORDER****No. 2020-67****Declaration of state of emergency under the****Emergency Powers of the Governor Act, 1945 PA 302**

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply;

dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.

On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow

the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make

their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.

These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already

reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.

So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq., provides that "[d]uring times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state . . . the governor may proclaim a state of emergency and designate the area involved." MCL 10.31(1). The state of emergency ceases "upon declaration by the governor that the emergency no longer exists." MCL 10.31(2).

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A state of emergency remains declared across the State of Michigan under the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.
2. This order is effective immediately and continues through May 28, 2020 at 11:59 pm.
3. I will evaluate the continuing need for this order prior to its expiration.
4. Executive Order 2020-33 is rescinded and replaced. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.



●
MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN

OFFICIAL WEBSITE OF MICHIGAN.GOV

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

**Executive Order 2020-68 (COVID-19)****EXECUTIVE ORDER****No. 2020-68****Declaration of states of emergency and disaster under
the Emergency Management Act, 1976 PA 390**

On March 10, 2020, I issued Executive Order 2020-4, which declared a state of emergency in Michigan to address the COVID-19 pandemic. This new disease, caused by a novel coronavirus not previously identified in humans, can easily spread from person to person and can result in serious illness or death. There is currently no approved vaccine or antiviral treatment.

Scarcely three weeks later, the virus had spread across Michigan. As of April 1, 2020, the state had 9,334 confirmed cases of COVID-19 and 337 deaths from the disease, with many thousands more infected but not yet tested. The virus's rapid and relentless spread threatened to quickly overwhelm the state's health care system: hospitals in multiple counties were reportedly at or near capacity; medical personnel, supplies, and resources necessary to treat COVID-19 patients were in high demand but short supply;

dormitories and a convention center were being converted to temporary field hospitals. And the virus had also brought deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions.

On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan. Like Executive Order 2020-4, this declaration was based on multiple independent authorities: section 1 of article 5 of the Michigan Constitution of 1963; the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq.; and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq. On April 7, 2020, the Michigan legislature adopted a concurrent resolution to extend the states of emergency and disaster declared under the Emergency Management Act until April 30, 2020.

Since I first declared an emergency in response to this pandemic, my administration has taken aggressive measures to fight the spread of COVID-19, prevent the rapid depletion of this state's critical health care resources, and avoid needless deaths. The best way to slow

the spread of the virus is for people to stay home and keep their distance from others. To that end, and in keeping with the recommendations of public health experts, I have issued orders restricting access to places of public accommodation and school buildings, limiting gatherings and travel, and requiring workers who are not necessary to sustain or protect life to remain at home. I have also issued orders enhancing the operational capacity and efficiency of health care facilities and operations, allowing health care professionals to practice to the full extent of their training regardless of licensure, and facilitating the delivery of goods, supplies, equipment, and personnel that are needed to combat this pandemic. And I have taken steps to begin building the public health infrastructure in this state that is necessary to contain the infection.

My administration has also moved quickly to mitigate the economic and social harms of this pandemic. Through my orders, we have placed strict rules on businesses to prevent price gouging, put a temporary hold on evictions for families that cannot make

their rent, expanded eligibility for unemployment benefits, provided protections to workers who stay home when they or their close contacts are sick, and created a structure through which our schools can continue to provide their students with the highest level of educational opportunities possible under the difficult circumstances now before us.

These statewide measures have been effective, but the need for them—like the unprecedented crisis posed by this global pandemic—is far from over. Though its pace of growth has showed signs of slowing, the virus remains aggressive and persistent: to date, there have been 41,379 confirmed cases of COVID-19 in Michigan, and 3,789 deaths from the disease—fourfold and tenfold increases, respectively, since the start of this month. And there are still countless more who are infected but have not yet been tested. There remains no treatment for the virus; it remains exceptionally easy to transmit, passing from asymptomatic individuals and surviving on surfaces for days; and we still lack adequate means to fully test for it and trace its spread. COVID-19 remains present and pervasive in Michigan, and it stands ready to quickly undo our recent progress in slowing its spread. Indeed, while COVID-19 initially hit Southeast Michigan hardest, the disease is now increasing more quickly in other parts of the state. For instance, cases in some counties in Western and Northern Michigan are now doubling every 6 days or faster.

The economic and social harms from this pandemic likewise persist. Due to the pandemic and the responsive measures necessary to address it, businesses and government agencies have had to quickly and dramatically adjust how they work. Where working from home is not possible, businesses have closed or significantly restricted their normal operations. Michiganders are losing their jobs in record numbers: to date, roughly one quarter of the eligible workforce has filed for unemployment. And state revenue, used to fund many essential services such as our schools, has dropped sharply.

The economic damage—already severe—will continue to compound with time. Between March 15 and April 18, Michigan had 1.2 million initial unemployment claims—the fifth-highest nationally, amounting to nearly 24% of the Michigan workforce. During this crisis, Michigan has often processed more unemployment claims in a single day than in the most painful week of the Great Recession, and the state has already

reached its highest unemployment rate since the Great Depression. On April 9, 2020, economists at the University of Michigan forecasted that the U.S. economy will contract by 7% in the second quarter of this year, or roughly an annualized rate of 25%. As a result, many families in Michigan will struggle to pay their bills or even put food on the table.

So too will the pandemic continue to disrupt our homes and our educational, civic, social, and religious institutions. Transitioning almost overnight to a distance-learning environment has placed strain on educators, students, and parents alike. The closure of museums and theaters limits people's ability to enrich themselves through the arts. And curtailing gatherings has left many seeking new ways to connect with their community during these challenging times.

The health, economic, and social harms of the COVID-19 pandemic thus remain widespread and severe, and they continue to constitute a statewide emergency and disaster. While the virus has afflicted some regions of the state more severely than others, the extent of the virus's spread, coupled with its elusiveness and its ease of transmission, render the virus difficult to contain and threaten the entirety of this state. Although local health departments have some limited capacity to respond to cases as they arise within their jurisdiction, state emergency operations are necessary to bring this pandemic under control in Michigan and to build and maintain infrastructure to stop the spread of COVID-19, trace infections, and quickly direct additional resources to hotspots as they arise. State assistance to bolster health care capacity and flexibility also has been, and will continue to be, critical to saving lives, protecting public health and safety, and averting catastrophe.

Moreover, state disaster and emergency recovery efforts remain necessary not only to support Michiganders in need due to the economic effects of this pandemic, but also to ensure that the prospect of lost income does not impel workers who may be infected to report to work, which would undermine infection control and contribute to further spread of the virus. Statewide coordination of these efforts is crucial to creating a stable path to recovery. Until that recovery is underway, the economic and fiscal harms from this pandemic have been contained, and the threats posed by COVID-19 to life and the public health, safety, and welfare of this state have been neutralized, statewide disaster and emergency conditions will exist.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

The Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., provides that "[t]he governor is responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency." MCL 30.403(1). In particular, the Emergency Management Act mandates that "[t]he governor shall, by executive order or proclamation, declare a state of emergency" and/or a "state of disaster" upon finding that an emergency and/or disaster has occurred or is threatening to occur. MCL 30.403(3) & (4). Under the Emergency Management Act, an emergency constitutes "any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state." MCL 30.402(h). And a disaster constitutes "an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including, but not limited to, . . . epidemic." MCL 30.402(e).

Acting under the Michigan Constitution of 1963 and Michigan law:

1. I now declare a state of emergency and a state of disaster across the State of Michigan under the Emergency Management Act.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. This order is effective immediately and continues through May 28, 2020 at 11:59 pm.

4. I will evaluate the continuing need for this order prior to its expiration.
5. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.



MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-69

Temporary restrictions on the use of places of public accommodation

Rescission of Executive Order 2020-43

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of

emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is reasonable and necessary to impose limited and temporary restrictions on the use of places of public accommodation.

Executive Order 2020-20 imposed such restrictions, which were then supplemented by the restrictions on in-person work, travel, and gatherings imposed by Executive Order 2020-42. Executive Orders 2020-20 and 2020-42 were then replaced by Executive Orders 2020-43 and 2020-59, respectively. Because these restrictions on places of public accommodation remain reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents, this order extends their duration to May 28, 2020. With this order, Executive Order 2020-43 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Effective immediately and continuing until May 28, 2020 at 11:59 pm, the following places of public accommodation are closed to ingress, egress, use, and occupancy by members of the public:
 - (a) Restaurants, food courts, cafes, coffeehouses, and other places of public accommodation offering food or beverage for on-premises consumption;
 - (b) Bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption;
 - (c) Hookah bars, cigar bars, and vaping lounges offering their products for on-premises consumption;
 - (d) Theaters, cinemas, and indoor and outdoor performance venues;
 - (e) Libraries and museums;
 - (f) Gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor exercise facilities, exercise studios, and facilities offering non-essential personal care services;
 - (g) Casinos licensed by the Michigan Gaming Control Board, racetracks licensed by the Michigan Gaming Control Board, and Millionaire Parties licensed by the Michigan Gaming Control Board; and
 - (h) Places of public amusement not otherwise listed above.

Places of public accommodation subject to this section are encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and must use precautions in doing so to mitigate the

potential transmission of COVID-19, including social distancing. In offering food or beverage, a place of public accommodation subject to this section may permit up to five members of the public at one time in the place of public accommodation for the purpose of picking up their food or beverage orders, so long as those individuals are at least six feet apart from one another while on premises.

This section does not prohibit an employee, contractor, vendor, or supplier of a place of public accommodation from entering, exiting, using, or occupying that place of public accommodation in their professional capacity.

2. The restrictions imposed by this order do not apply to any of the following:
 - (a) Places of public accommodation that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries, other than those portions of the place of public accommodation subject to the requirements of section 1;
 - (b) Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
 - (c) Crisis shelters or similar institutions; and
 - (d) Food courts inside the secured zones of airports.
3. For purposes of this order:
 - (a) "Non-essential personal care services" includes but is not limited to hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services that require individuals to be within six feet of each other. This does not include services necessary for medical treatment as determined by a licensed medical provider.
 - (b) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, or recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes the facilities of private clubs, including country clubs, golf clubs, boating or yachting clubs, sports or athletic clubs, and dining clubs.
 - (c) "Place of public amusement" means a place of public accommodation that offers indoor services or facilities, or outdoor services or facilities involving close contact of persons, for amusement or other recreational or entertainment purposes. A place of public amusement includes an amusement park, arcade, bingo hall, bowling alley, indoor climbing facility, skating rink, trampoline park, and other similar recreational or entertainment facilities.
4. The director of the Department of Health and Human Services, the Michigan Liquor Control Commission, and the executive director of the Michigan Gaming Control


Board must issue orders and directives and take other actions pursuant to law as necessary to implement this order.

5. This order does not alter any of the obligations under law of an employer affected by this order to its employees or to the employees of another employer.
6. The restrictions and requirements imposed by this order supplement, and must not be construed to diminish or relax in any way, the restrictions and requirements imposed by Executive Order 2020-59 or any executive order that may follow from it.
7. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.
8. Executive Order 2020-43 is rescinded.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 30, 2020

Time: 9:27 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

THE OFFICE OF

GOVERNOR GRETCHEN WHITMER

WHITMER / NEWS / EXECUTIVE ORDERS

Executive Order 2020-70 (COVID-19)**EXECUTIVE ORDER****No. 2020-70****Temporary requirement to suspend activities that
are not necessary to sustain or protect life****Rescission of Executive Order 2020-59**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the weeks that followed, the virus spread across Michigan, bringing deaths in the thousands, confirmed cases in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued

Executive Order 2020-67 to continue the emergency declaration under the Emergency Powers of the Governor Act, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the Emergency Management Act.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, to establish the public health infrastructure necessary to contain the spread of infection, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. In Executive Orders 2020-42 and 2020-59, I extended that initial order, modifying its scope as needed and appropriate to match the ever-changing circumstances presented by this pandemic.

The measures put in place by Executive Orders 2020-21, 2020-42, and 2020-59 have been effective: the number of new confirmed cases each day has started to drop. Although the virus remains aggressive and persistent—on April 30, 2020, Michigan reported 41,379 confirmed cases and 3,789 deaths—the strain on our health care system has begun to relent, even as our testing capacity has increased. We can now start the process of gradually resuming in-person work and activities that were temporarily suspended under my prior orders. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone.

Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-59 and amend their scope. With Executive Order 2020-59, I ordered that certain previously suspended work and activities could resume, based on an evaluation of public health metrics and an assessment of the statewide risks and benefits. That evaluation remains ongoing, and based upon it, I find that we will soon be positioned to allow another segment of previously suspended work to resume. This work is permitted to resume on May 7, 2020, and includes

construction, real-estate activities, and work that is traditionally and primarily performed outdoors. This work, like the resumed activities allowed under Executive Order 2020-59, will be subject to stringent precautionary measures. This partial and incremental reopening will allow my public health team to evaluate the effects of allowing these activities to resume, to assess the capacity of the health care system to respond adequately to any increases in infections, and to prepare for any increase in patients presenting to a health-care facility or provider. With this order, Executive Order 2020-59 is rescinded. This order will remain in effect until May 15, 2020.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.
2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life, to conduct minimum basic operations, or to perform a resumed activity within the meaning of this order.
 - a. For purposes of this order, workers who are necessary to sustain or protect life are defined as "critical infrastructure workers," as described in sections 8 and 9 of this order.
 - b. For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 11 of this order.

- c. Workers who perform resumed activities are defined in section 10 of this order.
5. Businesses and operations that employ critical infrastructure workers or workers who perform resumed activities may continue in-person operations, subject to the following conditions:
- a. Consistent with sections 8, 9, and 10 of this order, businesses and operations must determine which of their workers are critical infrastructure workers or workers who perform resumed activities and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:
 - 1. Workers in health care and public health.
 - 2. Workers who perform necessary government activities, as described in section 6 of this order.
 - 3. Workers and volunteers described in section 9(d) of this order.
 - b. In-person activities that are not necessary to sustain or protect life or to perform a resumed activity must be suspended.
 - c. Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 11 of this order. Stores that are open for in-person sales must also adhere to the rules described in section 12 of this order.
 - d. Any business or operation that employs workers who perform resumed activities under section 10(a) of this order, but that does not sell necessary

supplies, may sell any goods through remote sales via delivery or at the curbside. Such a business or operation, however, must otherwise remain closed to the public.

6. All in-person government activities at whatever level (state, county, or local) are suspended unless:
- a. They are performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders, as defined in sections 8 and 9 of this order.
 - b. They are performed by workers who are permitted to resume work under section 10 of this order.
 - c. They are necessary to support the activities of workers described in sections 8, 9, and 10 of this order, or to enable transactions that support businesses or operations that employ such workers.
 - d. They involve public transit, trash pick-up and disposal (including recycling and composting), the management and oversight of elections, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.
 - e. For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
 - f. Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 11 of this order.

7. Exceptions.

- a. Individuals may leave their home or place of residence, and travel as necessary:
 1. To engage in outdoor recreational activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor recreational activity includes walking, hiking, running, cycling, boating, golfing, or other similar activity, as well as any comparable activity for those with limited mobility.
 2. To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

3. To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
4. To perform resumed activities, as described in section 10 of this order, after being designated to perform such work by their employers.
5. To perform necessary government activities, as described in section 6 of this order.
6. To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including in-person procedures or veterinary services that, in accordance with a duly implemented non-essential procedure or veterinary services postponement plan, have not been postponed).
7. To obtain necessary services or supplies for themselves, their family or household members, their pets, and their motor vehicles.
 - A. Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, Individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences or motor vehicles.
 - B. Individuals may also leave the home to pick up or return a motor vehicle as permitted under section 9(l) of this order, or to have a motor vehicle or bicycle repaired or maintained.
 - C. Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
8. To pick up non-necessary supplies at the curbside from a store that must otherwise remain closed to the public.
9. To care for a family member or a family member's pet in another household.
10. To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.

11. To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
 12. To visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan, or when, failing such agreement, the individual secures an exception from the executive director of the Children's Services Agency.
 13. To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
 14. To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 15. To attend a funeral, provided that no more than 10 people are in attendance.
 16. To attend a meeting of an addiction recovery mutual aid society, provided that no more than 10 people are in attendance.
 17. To view a real-estate listing by appointment, as permitted under section 10(h) of this order.
- b. Individuals may also travel:
1. To return to a home or place of residence from outside this state.
 2. To leave this state for a home or residence elsewhere.
 3. Between two residences in this state, including moving to a new residence.
 4. As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.
- c. All other travel is prohibited, including all travel to vacation rentals.
8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- a. Health care and public health.
- b. Law enforcement, public safety, and first responders.
- c. Food and agriculture.
- d. Energy.
- e. Water and wastewater.
- f. Transportation and logistics.
- g. Public works.
- h. Communications and information technology, including news media.
- i. Other community-based government operations and essential functions.
- j. Critical manufacturing.
- k. Hazardous materials.
- l. Financial services.
- m. Chemical supply chains and safety.
- n. Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

- a. Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.
- b. Workers at suppliers, distribution centers, or service providers, as described below.
 1. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

2. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 3. Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
 4. Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.
- c. Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.
 - d. Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
 - e. Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
 - f. Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
 - g. Workers at laundromats, coin laundries, and dry cleaners.

- h. Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
 - i. Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.
10. For purposes of this order, workers who perform resumed activities are defined as follows:
- a. Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
 - b. Workers who perform bicycle maintenance or repair.
 - c. Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - d. Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under Executive Order 2020-69 or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - e. Workers for moving or storage operations, subject to the enhanced social-distancing rules described in section 11(h) of this order.
 - f. Effective at 12:01 am on May 7, 2020, and subject to the enhanced social-distancing rules described in section 11(h) of this order, workers who perform work that is traditionally and primarily performed outdoors, including but not limited to forestry workers, outdoor power equipment technicians, parking enforcement workers, and similar workers.
 - g. Effective at 12:01 am on May 7, 2020, workers in the construction industry, including workers in the building trades (plumbers, electricians, HVAC technicians, and similar workers), subject to the enhanced social-distancing rules described in section 11(i) of this order.
 - h. Effective at 12:01 am on May 7, 2020, workers in the real-estate industry, including agents, appraisers, brokers, inspectors, surveyors, and registers of deeds, provided that:
 - 1. Any showings, inspections, appraisals, photography or videography, or final walk-throughs must be performed by appointment and must be

limited to no more than four people on the premises at any one time.
No in-person open houses are permitted.

2. Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property.
 - i. Effective at 12:01 am on May 7, 2020, workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections.
11. Businesses, operations, and government agencies that remain open for in-person work must, at a minimum:
- a. Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available [here](#). Such plan must be available at company headquarters or the worksite.
 - b. Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
 - c. Promote remote work to the fullest extent possible.
 - d. Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
 - e. Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
 - f. Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
 - g. Adopt any other social distancing practices and mitigation measures recommended by the CDC.
 - h. Businesses or operations whose in-person work is permitted under sections 10(c) through 10(f) of this order must also:
 1. Prohibit gatherings of any size in which people cannot maintain six feet of distance from one another.

2. Limit in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another.
 3. Provide personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed.
 4. Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.
- i. Businesses or operations in the construction industry must also:
1. Adhere to all of the provisions in subsection (h) of this section.
 2. Designate a site-specific supervisor to monitor and oversee the implementation of COVID-19 control strategies developed under subsection (a) of this section. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
 3. Conduct a daily entry screening protocol for workers and visitors entering the worksite, including a questionnaire covering symptoms and exposure to people with possible COVID-19, together with, if possible, a temperature screening.
 4. Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in subprovision (3) of this subsection, or in the alternative issue stickers or other indicators to workers to show that they received a screening before entering the worksite that day.
 5. Require face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers.
 6. Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
 7. Encourage or require the use of work gloves, as appropriate, to prevent skin contact with contaminated surfaces.
 8. Identify choke points and high-risk areas where workers must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.

9. Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
 10. Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
 11. Restrict unnecessary movement between project sites.
 12. Create protocols for minimizing personal contact upon delivery of materials to the worksite.
12. Any store that remains open for in-store sales under section 9(f) or section 10(c) of this order:
- a. Must establish lines to regulate entry in accordance with subsection (b) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
 - b. Must adhere to the following restrictions:
 1. For stores of less than 50,000 square feet of customer floor space, must limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
 2. For stores of more than 50,000 square feet, must:
 - A. Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space.
 - B. Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.
 3. The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in this subsection as necessary to protect the public health.
 - c. May continue to sell goods other than necessary supplies if the sale of such goods is in the ordinary course of business.

- d. Must consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
13. No one shall rent a short-term vacation property except as necessary to assist in housing a health care professional aiding in the response to the COVID-19 pandemic or a volunteer who is aiding the same.
14. Michigan state parks remain open for day use, subject to any reductions in services and specific closures that, in the judgment of the director of the Department of Natural Resources, are necessary to minimize large gatherings and to prevent the spread of COVID-19.
15. Rules governing face coverings.
 - a. Any individual able to medically tolerate a face covering must wear a covering over his or her nose and mouth—such as a homemade mask, scarf, bandana, or handkerchief—when in any enclosed public space.
 - b. All businesses and operations whose workers perform in-person work must, at a minimum, provide non-medical grade face coverings to their workers.
 - c. Supplies of N95 masks and surgical masks should generally be reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers who interact with the public.
 - d. The protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., and any other protections against discrimination in Michigan law, apply in full force to individuals who wear a face covering under this order.
16. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, neither a place of religious worship nor its owner is subject to penalty under section 20 of this order for allowing religious worship at such place. No individual is subject to penalty under section 20 of this order for violating section 15(a) of this order.
17. Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority.
18. This order takes effect immediately, unless otherwise specified in this order, and continues through May 15, 2020 at 11:59 pm. Executive Order 2020-59 is

rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.

19. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
20. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Gretchen Whitmer, Governor


Date: - May 1, 2020

Time: 2:49 pm

Related Documents

EO 2020-70 MI Safe Start 




MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS

POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN

Coronavirus

CORONAVIRUS / RESOURCES / EXECUTIVE ORDERS & DIRECTIVES

Executive Order 2020-70 FAQs

The most up-to-date guidance on these and other mitigation strategies is available at Michigan.gov/Coronavirus.

This matter is rapidly evolving and MDHHS may provide updated guidance.

Executive Order 2020-70

Temporary requirement to suspend activities that are not necessary to sustain or protect life - Rescission of Executive Order 2020-59

Q: How does this order impact custody agreements / how does this order impact parents' visits with their children placed in foster care?

A: Under section 7(b)(4) of the order, individuals may travel as required by law enforcement or a court order, including the transportation of children pursuant to a Friend of the Court custody agreement. Court-ordered parent-child visits related to a child custody arrangement continue, but these visits need not always be in person. Alternatives including telephone and videoconference are acceptable.

Visits between a child and parent while a child resides in foster care should be conducted by telephone and videoconference or other such technology, whenever possible. Under section 7(a)(12) of the order, travel is permissible to visit a child in out-of-home care, or to facilitate a visit between a parent and a child in out-of-home care, when there is agreement between the child placing agency, the parent, and the caregiver about a safe visitation plan. When agreement cannot be reached by all three parties, exception requests must be approved by the Executive Director of the Children's Services Agency. In-person visits at a child caring institution need not occur unless a court order requires in-person contact to occur and it can be safely facilitated.

Q: Can pet grooming services be provided?



A: No. Grooming supplies may be sold by any store remotely for curbside pickup or delivery, and may also be sold in-store by stores that also sell necessary supplies (such as grocery stores). Grooming services, however, remain prohibited because they require in-person work not permitted by the order.

Q: Are in-person collection activities such as repossession included in the definition of financial services for the purposes of Executive Order 2020-70?

A: No.

Q: Are funerals allowed under Executive Order 2020-70?

A: Yes. Under the order people may leave their home to attend a funeral, provided that no more than 10 people are in attendance. This applies to all funeral-related activities.

Q: Does Executive Order 2020-70 restrict the exercise of tribal treaty rights?

A: No. Executive Order 2020-70 does not restrict activities by tribal members to exercise their federal treaty rights within the boundaries of their treaty territory (also known as "ceded territory"). These activities may be subject to restrictions imposed by tribal authorities.

Q: Are stores prohibited from advertising under Executive Order 2020-70?

A: No.

Q: Does traveling to and attending a religious service in a parking lot of a place of religious worship with congregants remaining in their own vehicles constitute an activity subject to penalty under section 20 of the order?

A: No.



Q: Can vehicles under an existing contract be delivered to police departments?

A: Yes. Workers at auto dealerships are allowed to leave the home for work as necessary to facilitate remote transactions and to deliver cars to customers. Under the order, all work must be carried out remotely to the greatest extent possible, and any in-person work that is permitted must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Does Executive Order 2020-70 prohibit persons from engaging in outdoor activities that are protected by the First Amendment to the United States Constitution?

A: No. Persons may engage in expressive activities protected by the First Amendment within the State of Michigan, but must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the person's household.

Q: May a company that performs oil changes and other routine automotive maintenance services provide those services in person to the public?

A: Yes. Workers that provide auto repair and maintenance services constitute critical infrastructure workers and may perform that work in person as needed. All work under the order must be performed remotely to the greatest extent possible, and any in-person work must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Can security companies and security guards continue to operate?

A: Under the order, workers are permitted to leave their home for work if their in-person presence is strictly necessary to conduct the minimum basic operations of a business under section 4(b) of the order, which includes ensuring security. Some security workers may also constitute critical infrastructure workers under section 8 or section 9(b) of the order. Security workers who have been properly designated for in-person work under any of these criteria may leave their home to perform that work as



needed. All work under the order must be performed remotely to the greatest extent possible, and any in-person work must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Can law firms, attorney offices and legal aid clinics continue in-person activities?

A: Generally, no. Attorneys do not constitute "critical infrastructure workers" and thus may not leave their homes for work unless, under section 9(d) of the order, they are "provid[ing] food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities." This is a tightly circumscribed category that captures only work that must be carried out in person and is absolutely necessary to assist those with a genuine and emergent need. All work under the order must be performed remotely to the greatest extent possible, and any in-person work must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Is bottle return an essential service?

A: Although bottle return services are often located within grocery and convenience stores, they are not considered critical infrastructure. There will be no change in the deposit collected at the time of purchase during this temporary suspension of bottle return services.

Q: Does in-person work that is essential to sustain or protect human life also include in-person work to prevent severe psychological harm?

A: Yes.

Q: Are automotive dealership workers considered critical infrastructure under Executive Order 2020-70?



A: Under Executive Order 2020-70, showrooms of automotive dealerships are closed, but the automotive repair and maintenance components of a dealership can remain open for in-person work. Additionally, workers at auto dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver automobiles to customers are permitted. All work under the order must be performed remotely to the greatest extent possible, and any in-person work must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Are childcare workers considered critical infrastructure employees?

A: Childcare workers are considered critical infrastructure workers but only to the extent necessary to serve the children or dependents of critical infrastructure workers, workers who conduct minimum basic operations, workers who perform necessary government activities, or workers who perform resumed activities, as defined under the order.

Q: Under the Stay Home, Stay Safe Executive Order, can school districts continue to provide food service for students?

A: Gov. Whitmer is committed to ensuring that Michigan students have access to the food they need during the COVID-19 pandemic. Under the governor's executive order, K-12 school food services are considered critical infrastructure and should continue.

Q: Do I need to carry credentials or any paperwork that indicates I've been designated a critical infrastructure employee or to travel to and from my home or residence?

A: No, there is not a requirement under Executive Order 2020-70 to carry credentials or paperwork with you under any circumstance.

Q: Can hardware stores remain open?



A: Yes. Workers at hardware stores are considered part of the critical infrastructure workforce. Under the order, all work must be carried out remotely to the greatest extent possible, and any in-person work that is permitted must be done in accordance with the mitigation measures required under section 11 of the order. Stores must also adhere to the additional requirements imposed by section 12 of the order.

Q: Are tobacco shops, cigar bars, vape shops, and hookah lounges able to stay open to the public under EO 2020-70?

A: No, employees at these businesses are not critical infrastructure workers, and they may not be designated to leave their homes to provide goods or services to the public. As needed, however, a business may designate workers to leave their homes for work if their in-person presence is strictly necessary to conduct the minimum basic operations listed in section 4(b) of the order. Minimum basic operations do not include serving members of the public. Under the order, all work must be carried out remotely to the greatest extent possible, and any in-person work that is permitted must be done in accordance with the mitigation measures required under section 11 of the order.

Q: May members of the media continue to have access to the station to relay news?

A: Yes. Employees responsible for disseminating news are "critical infrastructure workers," as indicated in section 8(h) of the order, and they may be designated to leave their homes for that work as needed. Under the order, all work must be carried out remotely to the greatest extent possible, and any in-person work that is permitted must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Are massage spas allowed to be open to provide services to members of the public under the Executive Order?

A: No, employees at these businesses are not critical infrastructure workers, and they may not be designated to leave their homes to provide services to the public. As needed, a business may designate workers to leave their homes for work if their in-person presence is strictly necessary to conduct the minimum basic operations listed in section 4(b) of the order. Minimum basic operations do not include serving



members of the public. A business may also designate workers whose in-person presence is necessary to process and fulfill remote orders for any goods (but not services) that the business may offer, via delivery or curbside pickup. Under the order, all work must be carried out remotely to the greatest extent possible, and any in-person work that is permitted must be done in accordance with the mitigation measures required under section 11 of the order.

Q: Do businesses or operations who employ critical infrastructure workers still need to designate suppliers, distribution centers, or service providers in order to keep them in operation?

A: No. Suppliers, distribution centers, and service providers that are necessary to critical infrastructure work can now designate their own workers as critical infrastructure workers. They may do so, however, only to the extent necessary to support critical infrastructure work up the supply chain. They may also designate workers whose in-person presence is necessary to conduct minimum basic operations or to process and fulfill remote orders for curbside pick-up or delivery. If a worker is not needed in person to support such work, he or she may not be designated.

Q: Does the order prohibit a recreational ride on a motorcycle?

A: No. Like all outdoor recreational activity, however, it must be done in a manner consistent with remaining at least six feet from people outside the individual's household, and riders are strongly encouraged to follow all other mitigation measures recommended by the CDC to suppress the spread of COVID-19.

RELATED CONTENT

Executive Order 2020-73 FAQs

Executive Order 2020-65 FAQs

Executive Order 2020-69 FAQs

Executive Order 2020-59 FAQs (No longer effective)

Executive Order 2020-50 FAQs



Executive Order 2020-48 FAQs

Executive Order 2020-43 FAQs (No longer effective)

Executive Order 2020-40 FAQs (No longer effective)

Executive Order 2020-35 FAQs (No longer effective)

Executive Order 2020-42 FAQs (No longer effective)

Executive Order 2020-37 FAQs (No longer effective)

Executive Order 2020-17 FAQs

Executive Order 2020-21 FAQs [No longer effective]

Executive Order 2020-20 FAQs [No longer effective]

Executive Order 2020-11 FAQs [No longer effective]

Executive Order 2020-10 FAQs [No longer effective]

Executive Order 2020-07 FAQs [No longer effective]

Executive Order 2020-05 FAQs [No longer effective]

Executive Order 2020-09 FAQs [No longer effective]



MICHIGAN.GOV HOME
ADA
MICHIGAN NEWS
POLICIES

COPYRIGHT 2020 STATE OF MICHIGAN





MI SAFE START

A PLAN TO RE-ENGAGE
MICHIGAN'S ECONOMY

Governor Gretchen Whitmer

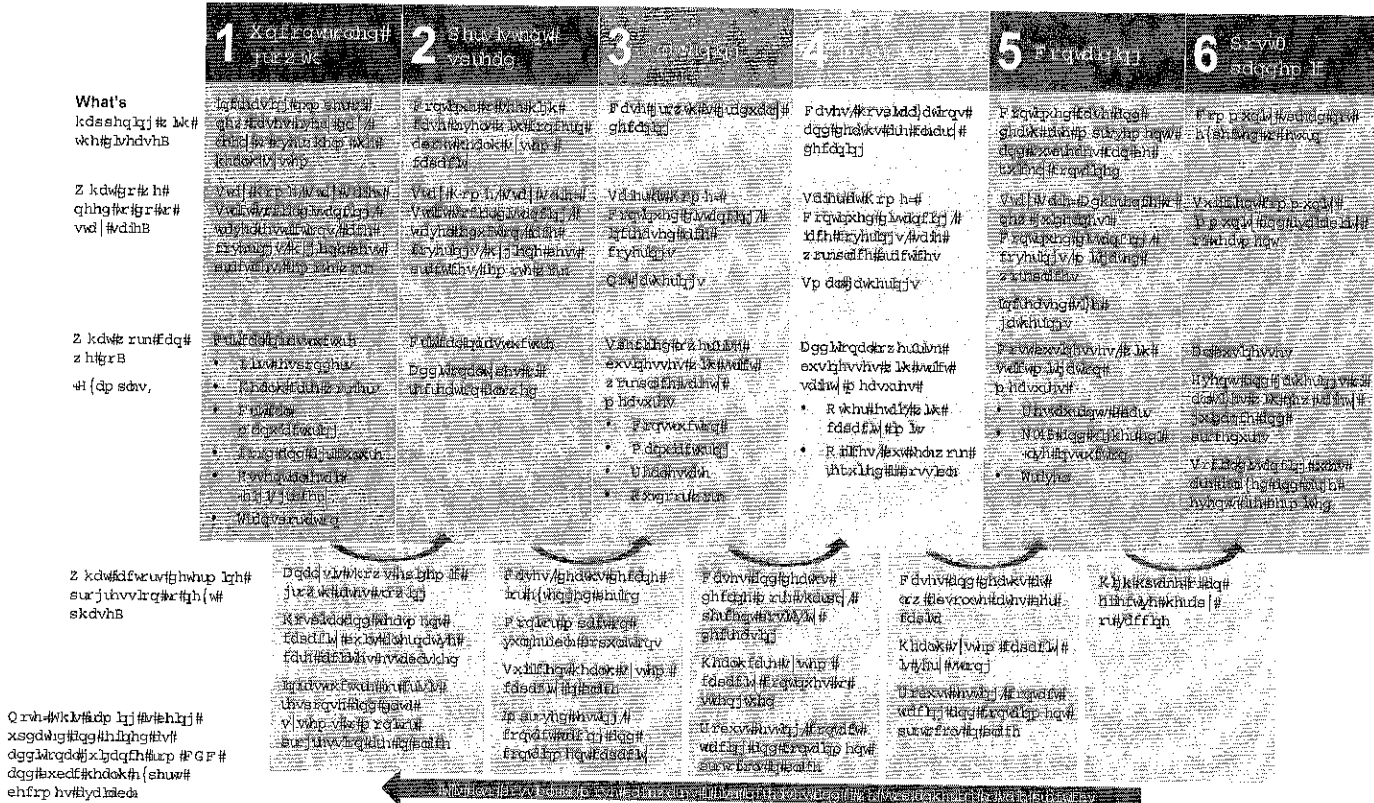
May 7, 2020

GEORGE W. ROMNEY BUILDING - 111 SOUTH CAPITOL AVENUE - LANSING, MICHIGAN 48909

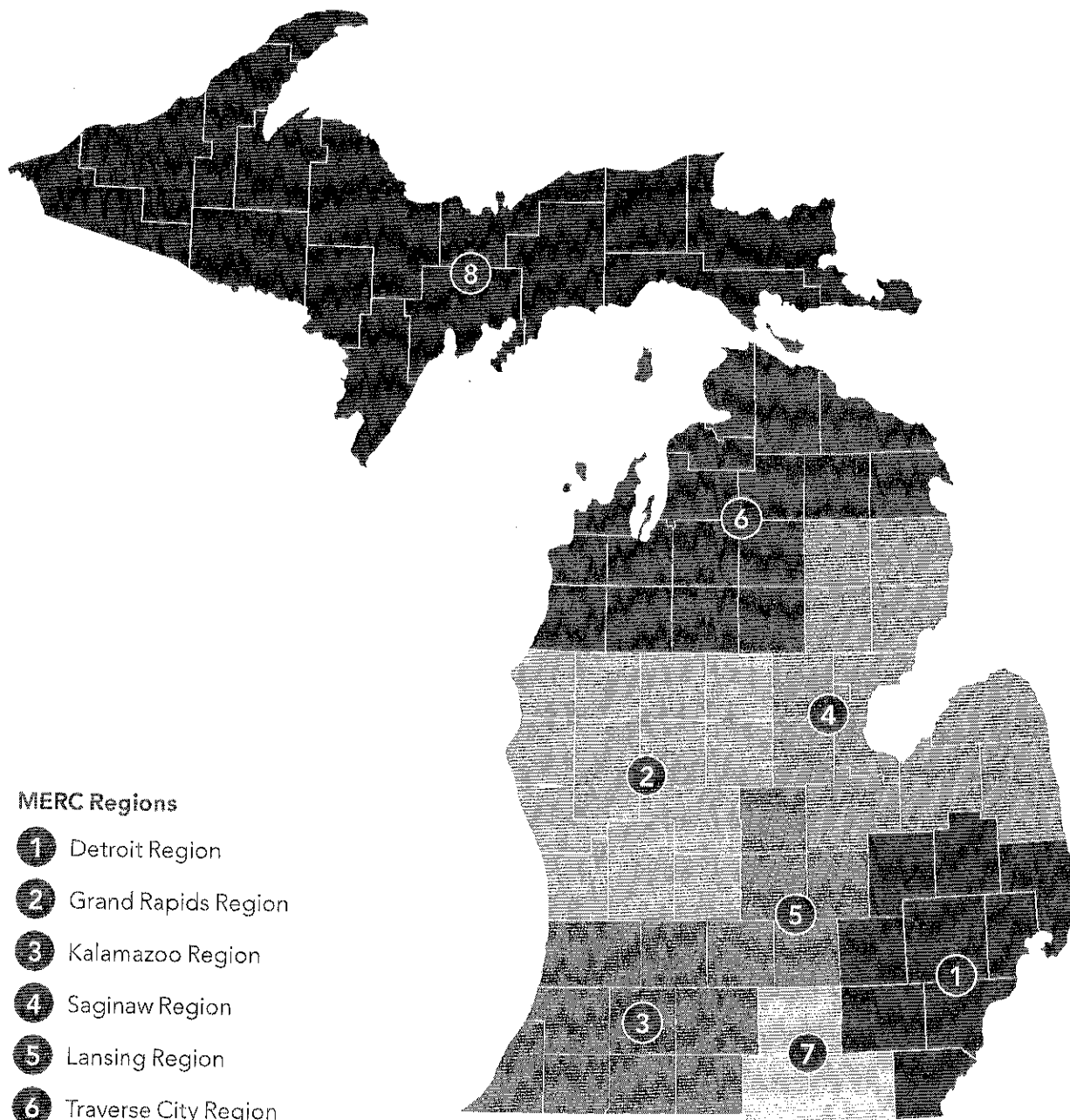
www.michigan.gov

PRINTED IN HOUSE

MI SAFE START PLAN



MICHIGAN ECONOMIC RECOVERY COUNCIL REPORTING REGIONS



MERC Regions

- 1 Detroit Region
- 2 Grand Rapids Region
- 3 Kalamazoo Region
- 4 Saginaw Region
- 5 Lansing Region
- 6 Traverse City Region
- 7 Jackson Region
- 8 Upper Peninsula



INTRODUCTION

We have made tremendous progress in fighting COVID-19 in Michigan. Our medical workers, first responders, and other critical workers have put their lives on the line for us every day, and we owe it to them to do whatever we can to stop the spread of the virus.

All of us know the importance of getting the economy moving again. We have already loosened some restrictions on landscaping, construction, and manufacturing. But the worst thing we could do is open up in a way that causes a second wave of infections and death, puts health care workers at further risk, and wipes out all the progress we've made.

We will keep listening to experts and examining the data here in Michigan to reduce deaths, keep our healthcare system from collapsing, and protect those working on the front lines.

Together, we will move forward.

Governor Gretchen Whitmer's MI Safe Start Plan outlines how we will begin to re-engage while continuing to keep our communities safe. Re-engagement will happen in phases. Those businesses that are necessary to protect and sustain life are already open. As we move into lower-risk phases, additional business categories will re-open and the restrictions on public gatherings and social interactions will ease.

As always, we will be guided by the facts in deciding whether to transition from one phase to another. We are looking at data every day to understand where we are: data that tells us where the epidemic is spreading, whether our hospitals and other health-care providers can safely cope with any surge in infections, and whether our public health system is up to the task of suppressing new outbreaks.

We need to keep working to expand testing and require people who test positive, or are close contacts of those who do, to self-isolate. Moving too fast without the tests we need could put Michigan at risk of a second wave of infections. The most important thing right now is to listen to the experts and follow the medical science.

We are also looking at the best available evidence on the risks that different business sectors present and the steps that can be taken to mitigate those risks and protect workers. Our Safe Start Plan has been guided by the state's top public health and university experts, and is based on input from a wide range of experts, including the CEOs of major Michigan companies, labor and union leaders, and small business owners around Michigan.

We must reopen gradually and safely. By proceeding incrementally, we can evaluate the effects of our decisions. If cases start to surge, we may need to tighten up again. If the disease is contained, we can keep relaxing. The MI Safe Start Plan will re-engage our economy carefully and deliberately to avoid a second wave of infections.

This will be a long process. Our ability to move forward depends on all of us and on our collective commitment to protecting ourselves and others—whether at home, at work, or anywhere else we go. We will always put the health and safety of Michiganders first.



STAGES OF OUR RESPONSE

In Governor Whitmer's Safe Start Plan, we evaluate where the state and each of its regions are across six phases of this epidemic:

1. **Uncontrolled growth:** Increasing number of new cases every day, likely to overwhelm the health system. Only critical infrastructure remains open.
2. **Persistent spread:** Continue to see high case levels with concern about health system capacity. Only critical infrastructure remains open, with lower-risk recreational activities allowed.
3. **Flattening:** Epidemic is no longer increasing and health system capacity is sufficient for current needs. Specified lower-risk businesses can reopen given adherence to strict safety measures.
4. **Improving:** Epidemic clearly decreasing and health system capacity is strong with robust testing and contact tracing. Additional businesses can reopen given adherence to strict safety measures.
5. **Containing:** Epidemic levels are extremely low and outbreaks can be quickly contained. Health system capacity is strong with robust testing and tracing. Most businesses can reopen given adherence to strict safety measures.
6. **Post-pandemic:** Community spread is not expected to return (e.g., because of a vaccine) and the economy is fully reopened.

Assessing which phase we are in involves a comprehensive review of the facts on the ground. Guided by our experts, we are closely monitoring data that allows us to answer three questions:

- A. Is the epidemic growing, flattening, or declining?
- B. Does our health system have the capacity to address current needs? Can it cope with a potential surge of new cases?
- C. Are our testing and tracing efforts sufficient to monitor the epidemic and control its spread?

We have also worked with our best public health experts and the business community to assess the infection risks posed by workplaces across every sector of the economy. In general, those businesses that are likely to re-open sooner are those that present lower levels of infection risk and whose work cannot be performed remotely. We have also evaluated risk mitigation strategies to minimize the chance that any infection will spread at the workplace. Within each phase, businesses may reopen in a staggered manner to ensure safety. Finally, as our understanding of this disease improves, our assessments of what is appropriate in each phase could change to match the latest scientific evidence.

We are also establishing working groups to advise the state on how we can safely re-engage child care and summer camps, as well as businesses such as restaurants and bars, travel and tourism, and entertainment venues, so that when it is safe, there are best practices established for how to partially open in a low-risk manner.

The following sections outline our approach for moving between phases as well as details on each phase of the MI Safe Start Plan.



When do we move between phases?

Guided by our public health experts, we are carefully evaluating the best available data to understand the degree of risk and readiness in Michigan. We are complementing that analysis with an understanding of the on-the-ground contextual realities. This comprehensive assessment is a critical input into whether we are prepared to move to the next phase and – just as importantly – whether the disease is surging and we need to adjust our approach.

It is crucial that we monitor the impact of each set of re-engagement activities before moving into the next phase. New transmission can take some time to become visible, and we need to understand any impact of previous re-engagement activities on new disease spread before evaluating a transition to the next stage. As we move into later phases, or if our progress stalls out, it may take longer to move from one phase to another.

Furthermore, it is important to evaluate indicators together: even though some may point to a lower level of risk, others may not. For example, if cases are declining but the health system does not have capacity to address a sudden uptick in cases, the degree of overall risk may still be high.

We will also examine whether different regions within Michigan may be at different phases. That inquiry, too, must be holistic: a region with a low rate of infection may have limited hospital capacity, for example, which puts it at relatively greater risk if an outbreak occurs. Where appropriate, however, regional tailoring makes sense for a state as large and diverse as ours.

Examples of the evidence reviewed for each of the three questions is described below:

A. Is the epidemic growing, flattening, or declining?

Evidence analyzed includes:

- **The number of new cases per million:** low levels of new cases can suggest limited continued transmission; high levels of new cases can suggest continued transmission activity.
- **Trends in new daily cases:** sustained decreases may suggest that there has not been new takeoff of the disease; increases would provide concern that there has been new takeoff.
- **% positive tests:** if testing levels are high, a low proportion of positive tests is further evidence of declining spread, and also suggests that we have a good understanding of the state of the epidemic. If there is a high proportion of positive tests, it could suggest further disease spread, or that we have a poor understanding of the true extent of the epidemic.



B. Does our health system have the capacity to address current needs as well as a potential increase, should new cases emerge?

Evidence analyzed includes:

- **Hospital capacity:** if hospitals are able to surge to accommodate a higher case load, it suggests that, if a small uptick in new cases occurred during additional re-engagement, our health system would not be overwhelmed. If hospitals are not able to surge in this way, any new case spread could threaten our health system.
- **PPE availability:** if hospitals have sufficient PPE to manage increased caseloads, it suggests health system capability to handle a small uptick in new cases.

C. Are our testing and tracing efforts sufficient to monitor the epidemic and control its spread?

Evidence analyzed includes:

- **Testing capacity:** if we are able to ensure that the individuals at risk in each re-engagement phase have access to testing when needed, we will be able to give individuals the information they need to stay safe and, at the same time, allow us to closely track the impact of re-engagement activities on our case growth. If we do not have this testing capacity, it will be harder to give our people and our decision-makers the information they need.
- **Tracing and containment effectiveness:** if we are able to quickly follow up on any newly identified cases and associated contacts, and if those individuals effectively self-isolate, we can more successfully contain any new increase in disease spread. Otherwise, transmission is likely to be higher, increasing our risk.

As new guidance continues to be provided by the CDC and other public health experts, our assessment will adjust to be continually informed by the best available science.



PHASE 1: UNCONTROLLED GROWTH

What does it look like



The number of daily new cases increases by a constant rate every day, which leads to an increasingly accelerating case curve. If a community remains in this phase for an extended period of time, healthcare facilities could quickly be overwhelmed. Because unmitigated behavior contributes to the exponential growth, communities can slow the growth rate and exit this phase by introducing social distancing practices and wearing masks when in public.

What work can we do

What do we need to do to stay safe

Businesses and organizations

Only work that is necessary to protect or sustain life will be permitted

- **Retail:** Limited to grocery stores and other critical retail (e.g., pharmacies)
- **Public Transportation:** Permitted
- **Restaurants & Bars:** Available for take-out, delivery and drive-through only
- **Manufacturing:** Critical manufacturing only
- **Construction:** Only permitted for critical infrastructure projects
- **Food & Agriculture:** Permitted
- **Offices:** Closed to all non-critical workers during this phase
- **Education & Child Care:** Remote learning in K-12 and higher education, child care for critical workers

Personal and social

- **Social Distancing:** In place, maintain a six-foot distance from others when outdoors / in public
- **Face coverings:** Required
- **Gatherings:** Not permitted
- **Outdoor Recreation:** Walking, hiking, biking permitted
- **Quarantine/Isolation:** Individuals who have confirmed or suspected COVID-19 must isolate, and any individual with a known exposure must quarantine, according to CDC and public health guidance
- **At-risk populations:** All at-risk individuals should continue to shelter in place. Members of households with at-risk residents should be aware that by returning to work or other environments where distancing is not possible, they could carry the virus back home. Precautions should be taken to isolate from at-risk residents. Businesses should strongly consider special accommodations for personnel who are members of an at-risk population



PHASE 2: PERSISTENT SPREAD

What does it look like



This phase occurs after the Uncontrolled Growth phase, but when the epidemic is still expanding in the community. There are still high case levels, but the growth rate might gradually decrease. Within this phase, the epidemic is widespread in a community and source of infection is more difficult to trace. Even though the growth rate of new cases is decreasing, high volumes of infected individuals mean that health systems could become overwhelmed, leading to higher mortality rates. During this phase, it is important to maintain social distancing practices in order to slow the spread to a level that health systems can handle as they are continuing to build capacity.

What work can we do

What do we need to do to stay safe

Businesses and organizations

Only work that is necessary to protect or sustain life will be permitted

- **Retail:** Limited to grocery stores and other critical retail (e.g., pharmacies), plus curbside or delivery for nonessential retail
- **Public Transportation:** Permitted
- **Restaurants & Bars:** Available for take-out, delivery and drive-through only
- **Manufacturing:** Critical manufacturing only
- **Construction:** Only permitted for critical infrastructure projects
- **Food & Agriculture:** Permitted
- **Offices:** Closed to all non-critical workers during this phase
- **Education & Child Care:** Remote learning in K-12 and higher education, child care for critical workers

Personal and social

- **Social Distancing:** In place, maintain a six-foot distance from other when outdoors / in public
- **Face coverings:** Required
- **Gatherings:** Not permitted
- **Outdoor Recreation:** Walking, hiking, biking permitted. Additional recreation allowed, including golfing and motorboating
- **Quarantine/Isolation:** Individuals who have confirmed or suspected COVID-19 must isolate, and any individual with a known exposure must quarantine, according to CDC and public health guidance
- **At-risk populations:** All at-risk individuals should continue to shelter in place. Members of households with at-risk residents should be aware that by returning to work or other environments where distancing is not possible, they could carry the virus back home. Precautions should be taken to isolate from at-risk residents. Businesses should strongly consider special accommodations for personnel who are members of an at-risk population



PHASE 3 : FLATTENING

What does it look like



This phase occurs when daily new cases and deaths remain relatively constant over a time period. Often, this occurs because communities have started to use social distancing practices and transmission rates have fallen to manageable levels. Because new cases are not constantly increasing, health system capacity has time to expand to epidemic needs and is not typically overwhelmed. During this phase, testing and contact tracing efforts are ramped up statewide. To prevent each infected individual from spreading the virus unchecked, rapid case investigation, contact tracing, and containment practices are necessary within a community.

What work can we do

What do we need to do to stay safe

Businesses and organizations

Non-critical businesses that pose lower risk of infection are able to open with increased safety measures during this phase:

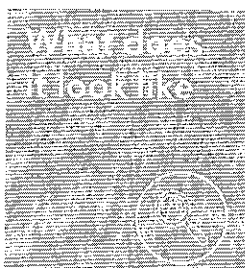
- **Retail:** Limited to grocery stores and other critical retail (e.g., pharmacies), plus curbside or delivery for nonessential retail
- **Public Transportation:** Permitted
- **Restaurants & Bars:** Available for take-out, delivery and drive-through only
- **Manufacturing:** Permitted with additional safety measures and guidelines
- **Construction:** Permitted with additional safety measures and guidelines
- **Food & Agriculture:** Permitted
- **Offices:** Closed to all non-critical workers
- **Education & Child Care:** Remote learning in K-12 and higher education, child care for critical workers and anyone resuming work activities
- **Outdoor work:** Permitted with additional safety measures and guidelines

Personal and social

- **Social Distancing:** In place, maintain a six-foot distance from other when outdoors / in public
- **Face coverings:** Required
- **Gatherings:** Not permitted
- **Outdoor Recreation:** Walking, hiking, biking, golfing, boating permitted
- **Quarantine/Isolation:** Individuals who have confirmed or suspected COVID-19 must isolate, and any individual with a known exposure must quarantine, according to CDC and public health guidance
- **At-risk populations:** All at-risk individuals should continue to shelter in place. Members of households with at-risk residents should be aware that by returning to work or other environments where distancing is not possible, they could carry the virus back home. Precautions should be taken to isolate from at-risk residents. Businesses should strongly consider special accommodations for personnel who are members of an at-risk population

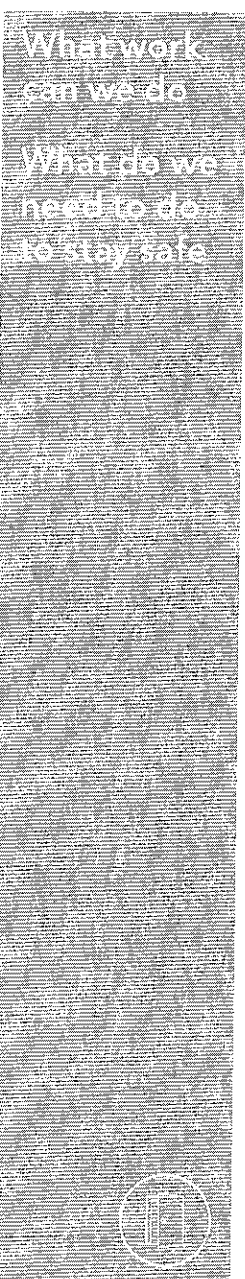


PHASE 4 : IMPROVING



What does it look like

This phase occurs when the number of new cases and deaths has fallen for a period of time, but overall case levels are still high. When in the Improving phase, most new outbreaks are quickly identified, traced, and contained due to robust testing infrastructure and rapid contact tracing. Health system capacity can typically handle these new outbreaks, and therefore case fatality rate does not rise above typical levels. Though a community might be in a declining phase, the overall number of infected individuals still indicate the need for distancing to stop transmission and move to the next phase.



What work can we do

What do we need to do to stay safe

Businesses and organizations

Most business and organizations will be open throughout this phase under strict safety measures. These include:

- **Retail:** Permitted with additional safety measures and guidelines (e.g., limited capacity)
- **Public Transportation:** Permitted
- **Restaurants & Bars:** Available for take-out, delivery and drive-through only
- **Manufacturing:** Permitted with additional safety measures and guidelines
- **Construction:** Permitted with additional safety measures and guidelines
- **Food & Agriculture:** Permitted
- **Offices:** Open (remote work still required where feasible)
- **Education:** Remote learning in K-12 and higher education, summer programs in small groups
- **Outdoor work:** Permitted with additional safety measures and guidelines

Personal and social

- **Social Distancing:** In place, maintain a six-foot distance from other when outdoors / in public
- **Face coverings:** Required
- **Gatherings:** Limited to small groups with social distancing
- **Outdoor Recreation:** Walking, hiking, biking, golfing, boating permitted. Activities permitted in small groups with social distancing
- **Quarantine/Isolation:** Individuals who have confirmed or suspected COVID-19 must isolate, and any individual with a known exposure must quarantine, according to CDC and public health guidance
- **At-risk populations:** All at-risk individuals should continue to shelter in place. Members of households with at-risk residents should be aware that by returning to work or other environments where distancing is not possible, they could carry the virus back home. Precautions should be taken to isolate from at-risk residents. Businesses should strongly consider special accommodations for personnel who are members of an at-risk population



PHASE 5: CONTAINING

What does it look like



During the Containing phase, new cases and deaths continue to decrease for an additional period of time. At this point, the number of active cases has reached a point where infection from other members of the community is less common. With widespread testing, positivity rates often fall much lower than earlier phases. Rapid case investigation, contact tracing, and containment strategies cause new cases to continue to fall. However, if distancing and other risk mitigation efforts are not continued, infections could begin to grow again because a permanent solution to the epidemic has not yet been identified.

What work can we do

What do we need to do to stay safe

Businesses and organizations

Most business and organizations will be open throughout this phase under strict safety measures

- **Retail:** Permitted with additional safety measures and guidelines (e.g., limited capacity)
- **Public Transportation:** Permitted
- **Restaurants & Bars:** Available for dine-in with additional safety measures and guidelines
- **Manufacturing:** Permitted with additional safety measures and guidelines
- **Construction:** Permitted with additional safety measures and guidelines
- **Food & Agriculture:** Permitted
- **Offices:** Open with additional safety measures and guidelines
- **Education:** Live instruction in K-12 and higher education
- **Outdoor work:** Permitted with additional safety measures and guidelines

Personal and social

- **Social Distancing:** In place, maintain a six-foot distance from other when outdoors / in public
- **Face coverings:** Required wherever possible
- **Gatherings:** Increased but still limited-sized groups with social distancing
- **Outdoor Recreation:** All outdoor recreation allowed
- **Quarantine/Isolation:** Individuals who have confirmed or suspected COVID-19 must isolate, and any individual with a known exposure must quarantine, according to CDC and public health guidance
- **At-risk populations:** All at-risk individuals should continue to shelter in place. Members of households with at-risk residents should be aware that by returning to work or other environments where distancing is not possible, they could carry the virus back home. Precautions should be taken to isolate from at-risk residents. Businesses should strongly consider special accommodations for personnel who are members of an at-risk population



PHASE 6: POST-PANDEMIC

What does it look like



Reaching this phase would mean that community spread is not expected to return, because of sufficient community immunity and availability of treatment. Because of this, the number of infected individuals falls to nearly zero and the community does not typically experience this strain of the epidemic returning. All areas of the economy reopen, and gatherings of all sizes resume.

What work can we do

What do we need to do to stay safe

Businesses and organizations

All businesses and organizations open with some lasting safety requirements

Personal and social

Minimal to no lasting limitations on personal and/or social activities



CONTROLLING SPREAD IN THE WORKPLACE

There are best practices workplaces should follow, with different levels of importance depending on the industry. The proper implementation of these best practices will mitigate risk in the workplace and allow for a safe and sustained return to work. If workplaces fail to follow some or all of these guidelines, it may curb the state-wide progress toward the revitalization phase and result in a re-instating of stricter social limitations.

These best practices fall into five categories:

A. Access control: Implementing best practices to quickly identify and catalogue potential introductions of COVID-19 into the workplace

- Daily symptom diaries (mandatory questionnaires self-attesting to symptoms and contacts)
- On-site temperature checks
- Rapid diagnostic testing protocols
- Intake procedures for visitors
- Guidelines for delivery areas

B. Social distancing: Minimizing levels of close contact within the workplace to limit the spread of COVID-19 among workers

- Remote work (standards for who can work in person, social distancing guidelines for work from home)
- Restrictions on common instances of non-essential close contact (e.g., crowded conference rooms, cafeterias)
- Restriction on in-person meeting size
- Physical barriers between workspaces

C. Sanitation / Hygiene: Increasing both the frequency and vigor of common cleaning practices as well as implementing new ones to reduce the amount of time COVID-19 can live on surfaces

- Frequent disinfection / cleaning (facilities and equipment)
- Local exhaust ventilation
- HEPA filters on HVAC units
- Availability of hand-washing facilities
- Restrictions on shared tooling / machinery



D. PPE: Ensuring all employees have access to personal protective equipment to keep them from both contracting and transmitting the COVID-19 virus

- Masks to be worn whenever workers cannot consistently maintain six-feet of separation
- Gloves as necessary
- Face shields as necessary

E. Contact tracing / Isolation: Designing and imparting to employees important procedures and protocols on what occurs if an employee is suspected to have and/or diagnosed with COVID-19

- Isolation protocols
- Notification protocols (HR, first responders, government authorities)
- Investigation standards
- Facility cleaning / shutdown procedure
- Quarantine and return-to-work guidelines



IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,

Plaintiffs,

Case No. 20-000079-MZ

v.

Hon. Cynthia Stephens

GRETCHEN WHITMER, in her
official capacity as Governor for
the State of Michigan,

Defendant.

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400 Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

JOSEPH T. FROELICH (P 71887)
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573
Froehlichj1@michigan.gov

Michael R. Williams(P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC
151 S. Rose St., Ste. 707
Kalamazoo, MI 49007 (269) 820-4100

williams@bsplaw.com dame@bsplaw.com

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

INTERVENORS' COMPLAINT FOR IMMEDIATE DECLARATORY RELIEF

NOW COME Intervening Plaintiffs JOHN F. BRENNAN, MARK BUCCHI, SAMUEL GUN, MARTIN LEAF and ERIC ROSENBERG (Intervenors, herein) and, as their complaint against Defendant Governor Gretchen Whitmer, state the following:

INTRODUCTION

1. The Michigan Legislature has, on May 6, 2020 filed suit herein contesting the legal validity of a number of Emergency Orders (EO's, herein) issued by Defendant Whitmer in response to the current pandemic called Covid-19. **Legislature's Complaint, herein.**

2. The Legislature's Complaint rightfully asserts that Defendant Whitmer has asserted vast executive-branch power to implement said sweeping EO's. In addition, in her May 1, 2020 EO 2020-70-FAQ publication, Defendant Whitmer, herself a licensed lawyer, asserts that "... Attorneys do not constitute 'critical

infrastructure workers' and thus may not leave their homes ..." subject to a few exceptions not readily discernible as the provision of legal advice and services to clients. Intervenor's assume Defendant Whitmer does not include herself in this this assessment.

3. The Legislature's Complaint accurately accuses Defendant Whitmer of publicly refusing to collaborate with the Legislature" and "unilaterally" crafting and implementing public policies governing almost every aspect of life in Michigan. These include restrictions on how every person in Michigan may work, go to school, worship, exercise legal rights, socialize, and live hour-by-hour, and, it now seems, these strictures are ones she intends to apply to licensed lawyers acting in the service of their clients.

4. Defendant has insisted that she need not even consider the Legislature's input in issuing EO's, and has indicated she might well continue her pattern of behavior indefinitely. Apparently she considers it within her province to likewise direct every other lawyer in the State to confine themselves to quarters indefinitely, pending her unilateral determination that they may re-enter the public realm and resume their work on behalf of their clients in offices they actually own or rent.

5. In asserting these powers, the Defendant has ignored the State Constitution and relied on erroneous readings of certain emergency management laws, namely the 1945 Emergency Powers of the Governor Act ("EPGA"), MCL 10.31–

.33 and the 1976 Emergency Management Act ("EMA"), MCL 30.401–.421. See EO 2020-4.

6. The Governor is wrong to do so. Her authority under the EMA, the one statute that accords Michigan governors emergency powers in the face of "epidemics" expired, as she expressly admits in her EO 2020-66 of April 30, 2020. The other statute, the 1945 EPGA, does not empower any Michigan governor to exercise emergency powers in response to "epidemics" or other "public health crises" the term Defendant Whitmer repeatedly uses to describe the Covid-19 pandemic, nor does it, as the Legislature's Complaint alleges, authorize statewide emergency actions. As the Legislature's Complaint has correctly asserted, the Michigan Constitution requires a separation of powers among co-equal branches of government. Intervenors merely add that this constitutional device is designed not only to protect the prerogatives and power of the Legislature, but the freedom and rights of every Michigan resident.

7. Contrary to express legislative intent and the most basic understanding of checks and balances, the Governor's actions threaten to leave Michigan in a state of emergency indefinitely, with no real constraints on the Governor's vast emergency powers during that time. As such, Michigan residents seeking legal counsel would be able to do so only on such terms as Defendant prescribes.

8. Especially during times of crisis, the law warrants respect, even when lawyers apparently do not.

9. INTENTIONALLY OMITTED

10. COVID-19 presents unquestioned threats to the public health that call for a comprehensive, collaborative and measured governmental response, not indefinite and dictatorial declarations of effective house arrest.

11. Defendant's ongoing "emergency" orders are improper and invalid as a matter of Michigan constitutional and statutory law.

PARTIES, JURISDICTION, AND VENUE

12. Plaintiff the Michigan House of Representatives is the lower chamber of the Michigan Legislature, created by Article 4, § 1, of Michigan's 1963 Constitution.

13. Plaintiff the Michigan Senate is the upper chamber of the Michigan

Legislature, created by Article 4, § 1, of Michigan's 1963 Constitution.

14. Intervenors are licensed Michigan lawyers in good standing, some enjoying Martindale Hubbell ratings of AV-Preeminent for decades.

15. Defendant Whitmer is being sued in her official capacity as Michigan's Governor, an office created by Article 5, § 1, of Michigan's 1963 Constitution.

16. The Court of Claims has "exclusive" jurisdiction to "hear and determine any claim or demand, statutory or constitutional," or any demand for equitable or declaratory relief . . . against the state or any of its departments or officers." MCL 600.6419(1)(a).

17. Because the Legislature and Intervenors raise statutory and constitutional claims, and seek equitable and declaratory relief, against the Governor, this Court has jurisdiction to hear these claims.

18. For the same reason, venue is appropriate in this Court.

DECLARATORY RELIEF UNDER MCR 2.605 IS
APPROPRIATE

19. Under *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), "whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory

judgment.” *Id.*

20. MCR 2.605(A)(1) states that, “[i]n a case of *actual controversy* within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.” (emphasis added).

21. To show an “actual controversy,” the plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing Sch Ed Ass’n*, 487 Mich at 372 n 20, quoting *Associated Builders & Contractors v Director of Consumer & Industry Servs*, 472 Mich 117, 126; 693 NW2d 374.

22. The Legislature and Intervenors assert that certain actions of the Governor are not authorized by statute and that they violate the separation of powers by impermissibly encroaching on the Legislature’s lawmaking power. Intervenors additionally assert that Defendant’s EO’s impermissibly interfere with their ability to serve their clients and support their households. The Governor disagrees.

23. A declaratory judgment is necessary to sharpen issues raised and to clarify whether the Governor’s orders are invalid because they violate statutes and the Michigan Constitution’s delegation of the lawmaking function to the legislative branch, and unlawfully impinge on the liberty and professional lives of Intervenors.

24. Therefore, the Legislature and Intervenors request a declaratory judgment under MCR 2.605.

FACTUAL BACKGROUND

25. On March 10, 2020, Michigan recorded its first COVID-19 case.

26. That same day, Governor Whitmer declared a state of emergency, relying on three legal authorities: Article 5, § 1, of Michigan's 1963 Constitution; the 1945 Emergency Powers of the Governor Act ("EPGA"), MCL 10.31-.33; and the 1976 Emergency Management Act ("EMA"), MCL 30.401-.421. EO 2020-4.

27. Article 5, § 1, says: "Except to the extent limited or abrogated by article V, section 2, or article IV, section 6, the executive power is vested in the governor."

28. The EPGA says in relevant part:

During times of great public crisis, disaster, **rioting**, catastrophe, or **similar public emergency** within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled, either upon application of the mayor of a city, sheriff of a county, or the commissioner of the Michigan state police or upon his or her own volition, the governor may proclaim a state of emergency and designate the area involved. After making the proclamation or declaration, the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area;

designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation, and use of alcoholic beverages and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety. [MCL 10.31(1).] (emphasis added)

29. The EMA says, in relevant part regarding states of "disaster":

The governor shall, by executive order or proclamation, declare a state of disaster if he or she finds a disaster has occurred or the threat of a disaster exists. The state of disaster shall continue until the governor finds that the threat or danger has passed, the disaster has been dealt with to the extent that disaster conditions no longer exist, or until the declared state of disaster has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature. An executive order or proclamation issued pursuant to this subsection shall indicate the nature of the disaster, the area or areas threatened, the conditions causing the disaster, and the conditions permitting the termination of the state of disaster [MCL 30.403(3).]

30. The EMA's next section—MCL 30.403(4)—uses substantially verbatim language to allow the Governor to declare a state of "emergency."

31. For the next two weeks, the Governor issued 17 executive orders on numerous topics. During that time, the Legislature passed \$150 million in funding for the COVID-19 public health efforts. See 2019 HB 4729 and 2019 SB 151. The Legislature continued to cooperate with the Governor, even as her public statements made it clear she views Michigan's response to COVID-19 as her own private province.

32. On March 23, 2020, the Governor issued her first Stay-at-Home Order (SHO), instituting social distancing, suspending "non-essential" businesses' non-basic operations, and forbidding people to leave their homes except for a few exceptions, all regardless of whether the prohibited activities could be performed without spreading the virus. EO 2020-21.

33. Over the next week, the Governor issued 12 more executive orders covering a number of topics. On March 30, 2020, the Legislature and the Governor signed a statement saying that "the Executive and Legislative branches of state government are working together to do whatever is necessary to ensure an effective response to COVID-19." *Joint Statement from Governor Whitmer and Legislative Leaders* <<https://bit.ly/2zUtwTn>> (March 30, 2020).

34. On April 1, 2020, the Governor issued EO 2020-33, titled "Expanded emergency and disaster declaration," relying again on Article 5, § 1, the EPGA, and the EMA.

35. Over the next week, Defendant suspended K-12 school through the rest of the school year, issued an order requiring employers to accommodate employees who are sick or whose family is sick, loosened FOIA requirements, lifted more regulatory mandates, and encouraged electronic signatures and remote notarization and witnessing.

36. On April 7, 2020, at Defendant's request, the Legislature voted to extend the declaration to April 30. 2020 SCR 24.

37. On April 9, 2020, the Governor issued a second, more restrictive SHO,

EO 2020-42. That order included restrictions against travelling between residences and limiting both the number of customers and the products sold in stores (such as paint, plants, and other items). Under the orders, a customer could buy hundreds of consumer products in one store aisle but find the garden plants roped off and prohibited in another.

38. Over the next few weeks, the Governor issued many other orders, including orders buying back spirits, extending validity of drivers' licenses and state ID cards, lifting various regulations, and suspending the statute of limitations and expiration of personal protection orders. The Governor also rescinded, restated, and corrected many of her former orders.

39. According to the Legislature, the speed, breadth, and number of the Governor's executive orders have confused many of the Legislature's constituents, many whom have never before reached out to a legislator. Largely in response to the Legislature's official and unofficial inquiries, the Governor has had to issue over 200 FAQs clarifying her various orders and even revise certain orders to cure identified errors. These errors included accidentally prohibiting agricultural veterinarian services and criminalizing not wearing a mask in a grocery store.

40. In addition to corrections, the Legislature has also used its expertise in crafting public policy to make suggestions, a small number of which the Governor has adopted; these range from protecting houses of worship from criminal penalties to

allowing curbside product sales and deliveries so that small businesses can more fairly compete with large retailers that have remained open.

41. In addition to trying to make sense of the executive orders, the Legislature has introduced almost 100 bills on COVID-19-related issues. These bills include tax deductions for first responders, directing universities to refund boarding, and many other helpful policy solutions. The Legislature has also passed a bill seeking to codify almost all the Governor's executive orders (though not her SHO's). The Governor has vetoed that bill.

42. On April 24, 2020, the Legislature passed a concurrent resolution to form a bipartisan Joint Select Committee on the COVID-19 Pandemic. 2020 HCR 20.

43. That same day, the Governor issued her third SHO, EO 2020-59.

44. On April 27, 2020, the Governor requested that the Legislature extend her EO 2020-33 declaration of disaster and emergency.

45. Although the Legislature carefully considered the question, it determined not to extend the Governor's declaration of disaster and emergency.

46. On April 30, 2020, at 7:29 p.m., as required by the EMA, the Governor issued EO 2020-66, which terminated her declarations of the COVID-19 disaster and emergency.

47. Just one minute later, notwithstanding the clear constraints of the EMA, the Governor issued EO 2020-68, which redeclared the same COVID-19 disaster and emergency through May 28, 2020 as though the Legislature had approved her requested extension. This is believed to be the first instance in Michigan history that

the Governor has unilaterally extended an emergency declaration under the EMA without legislative approval and contrary to the Legislature's refusal to extend said powers.

48. The Governor simultaneously declared that a state of emergency under the EPGA "remains declared" through May 28. EO 2020-67.

49. On May 2, the Governor issued her fourth stay-at-home order—EO 2020-70—which cites Article 5, § 1, the EPGA, and the EMA. That order purports to extend her previous SHO's core requirements, including social-distancing and essential-businesses-only rules, until May 15, 2020. On the same day, she issued FAQ's concerning EO 2020-70 which confirmed her personal assertion that lawyers were not "critical infrastructure workers", and generally could not leave their homes to assist or serve their clients.

COUNT I
VIOLATION OF THE EMERGENCY MANAGEMENT ACT

52. Intervenors reincorporate the allegations of the foregoing paragraphs as if fully stated herein.

53. The Governor's COVID-19 executive orders have relied, in large part, on the EMA, MCL 30.401–30.421.

54. Under the EMA, the Governor may unilaterally declare an emergency or disaster and then exercise her legislatively delegated authority—but only for 28 days. After 28 days, the Governor's EMA powers end unless the Legislature approves a continuing state of emergency or disaster. MCL 30.403(3)–(4).

55. INTENTIONALLY OMITTED.

50. On April 7, 2020, the Legislature agreed, via concurrent resolution, to extend the declarations of emergency and disaster to April 30, 2020.

51. The Legislature did not approve any further extension of any emergency or disaster declaration, whether under the EMA or otherwise.

52. The Governor terminated her declarations of a COVID-19 emergency and disaster under the EMA, as is statutorily required, but restated the same declarations under that same law just one minute later.

53. The Governor next issued another SHO claiming reliance on her alleged emergency powers under the EMA.

54. The Governor further ordered that all other still-existing COVID-19 executive orders now rest, in part, on her redeclared EMA emergency and disaster declarations.

55. Those actions are unauthorized by the EMA.

56. The Governor's contrary interpretation of the EMA would nullify the EMA's carefully circumscribed cooperative regime; produce absurd results; render the Legislature's role a nullity; and defeat a central purpose of the statute: allocating power across both the legislative and executive branches to respond to crises. It also would unlawfully threaten Intervenor's with potential criminal penalties if they leave their homes to work on behalf of their clients.

57. The Court should declare that the Governor cannot rely on the EMA to justify her April 30, 2020 declarations of emergency and disaster, or any of the executive orders that rest on those declarations.

COUNT II
VIOLATION OF THE EMERGENCY POWERS OF THE GOVERNOR
ACT

58. Intervenor's incorporate the allegations of the foregoing paragraphs as if fully stated herein.

59. The Governor's COVID-19 executive orders have also relied, in part, on alleged authority derived from the EPGA, MCL 10.31–10.33.

60. The EPGA, however, does not provide authority for the Governor's statewide COVID-19 executive orders.

61. The EPGA's plain text, especially when considered with the EMA's language and the EPGA's historical context, show that the EPGA was intended to address local crises in the vein of civil disturbances in an area within the state—not health emergencies.

62. Interpreting the EPGA otherwise would disregard the plain language of the EPGA and create significant constitutional flaws.

63. If, however, the EMA and EPGA are construed to be coextensive, then under the doctrine of *in pari materia*, the EMA's 28-day rule applies to the EPGA.

64. The Court should declare that the EPGA does not provide authority for the Governor's COVID-19 orders.

COUNT III
VIOLATION OF ARTICLE 5, § 1, OF THE 1963 MICHIGAN CONSTITUTION

71. Intervenor's incorporate the allegations of the foregoing paragraphs as if fully stated herein.

57. The Governor's COVID-19 executive orders have relied, in part, on her authority under Article 5, § 1, of Michigan's 1963 Constitution. This includes, for example, EO 2020-70, Michigan's "stay-at-home order," which purports to "suspend activities that are not necessary to sustain or protect life." EO 2020-70.

58. Article 5, § 1 says: "Except to the extent limited or abrogated by article V, section 2, or article IV, section 6, the executive power is vested in the governor." (Neither of those exceptions applies here.)

59. The Governor's COVID-19 executive orders—which create, modify, and suspend numerous laws—are an exercise of *lawmaking*, not the exercise of authority to execute duly enacted laws.

60. Under Article 5, § 1, “[t]he Governor has no power to make laws.” *Taxpayers of Mich Against Casinos v State*, 471 Mich 306, 356; 685 NW2d 221 (2004) (Weaver, J., concurring), citing *People v Dettenthaler*, 118 Mich 595; 77 NW 450 (1898).

61. Rather, “[e]xcept to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.” Const 1963, art 4, § 1. Importantly, neither of those exceptions apply here: Article 4, § 6, gives legislative power to the redistricting commission, and Article 5, § 2, “delegate[s] a very limited and specific legislative power to the executive.” *Soap & Detergent Ass’n v Nat. Res Com’n*, 415 Mich 728, 753; 330 NW2d 346 (1982).

62. Therefore, the Court should declare that Article 5, § 1, does not give the Governor the power to issue lawmaking executive orders to address an emergency, including the power to suspend, vitiate, modify, or supplement existing Michigan laws.

COUNT IV
VIOLATION OF ARTICLE 3, § 2, OF THE 1963 MICHIGAN CONSTITUTION

78. Intervenors incorporate the allegations of the foregoing paragraphs as if fully stated herein.

79. As noted above, the Executive Branch has no lawmaking authority; rather, the Legislature is *the* lawmaking branch of Michigan’s government. Const

1963, art 4, § 1.

80. Michigan's separation of powers clause says: "The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 3, § 2.

81. Defendant's unilateral extension of her COVID-19 executive orders past April 30 exercises lawmaking authority that belongs solely to the Legislature.

82. Ruling by Executive Order—functionally, rule by the pen of one person—is inconsistent with the above noted constitutional mandates.

83. Michigan has been under rule-by-executive-order for over eight weeks. Since April 30, 2020, that mode of gubernatorial behavior has been illegal under the above Constitutional provisions and statutes.

84. Whatever power the Governor may have rightfully wielded for a short time during the first appearance and then height of the COVID-19 emergency has now run out, as of April 30, 2020.

85. For nearly two months, the Legislature and Intervenors have been appropriately deferential to the Governor's efforts to manage the COVID-19 emergency, even when both found them disagreeable and wrongheaded.

86. But Michigan's constitutional structure—a structure built to weather crises of every kind—explicitly gives *only the Legislature* the power to make laws.

87. Since March 10, 2020, the Legislature has performed its lawmaking duties relative to COVID-19. It has set up committees and workgroups to recommend next steps. And both the Senate and House caucuses have offered Defendant plans to handle the COVID-19 fallout going forward. Meanwhile, the Legislature has continued its normal business, passing and introducing scores of bills on myriad topics, dozens of them pertaining to COVID-19. Many of these bills seek to establish through legislation what the Governor has attempted to do through executive order.

88. Crucially, neither the Legislature or Intervenors are asking this Court to pass on the wisdom of Defendant's myriad policy decisions or that she has no role to play in controlling COVID-19.

89. Rather, the Legislature and Intervenors are merely asking the Court to affirm Michigan's constitutional and statutory structure: that the Legislature *makes* the laws and the Executive *implements* them. Irrespective of the wisdom of the Governor's Covid-related choices, these are simply no longer her calls to make unilaterally. If the Governor wants to suspend, modify, or supplement a Michigan law, she must work with the Legislature to do so.

90. To the extent the Governor believes that the Legislature's delegation of authority under the EPGA somehow justifies her actions, she is wrong. First, even were it so disposed; the Legislature lacks the constitutional authority to delegate as much power as the Governor believes the EPGA gives her. The Governor's unprecedented interpretation of the EPGA would allow her to wield unbelievably broad lawmaking power. Such a delegation cannot survive in our constitutional system. Second, a proper delegation would be constitutionally required to include an express articulation of the exact policy to be achieved via the delegation and robust standards and safeguards for its achievement. The EPGA includes no clear articulation of policy and no standards or safeguards guiding the Governor's exercise of this awesome power.

91. The Court should therefore declare that the Governor's ongoing COVID-19 executive orders, as well as the EPA to the extent it authorizes those orders, violate the separation of powers.

REQUEST FOR RELIEF

WHEREFORE, Intervenor respectfully requests that this Court:

A. Order "a speedy hearing" of this action and "advance it on the calendar" under MCR 2.605(D).

B. Declare and adjudge that:

1. The Governor's authority to act under the EMA ended April 30, 2020;

2. The EPGA does not provide any authority for the Governor's COVID-19 executive orders;

3. The Governor has no lawmaking power under Const 1963, art 5, § 1;

4. The Governor's ongoing COVID-19 executive orders violate the separation of powers; and

5. The Governor has no authority to restrict Intervenors in the otherwise legal conduct of their legal practices.

C. Grant such other relief as this Court deems just and proper.

STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES and
MICHIGAN SENATE,

Plaintiffs,

v

GRETCHEN WHITMER, in
her official capacity as Governor of the
State of Michigan,

Defendant.

No. 20-000079-MZ

HON. CYNTHIA DIANE STEPHENS

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Attorneys for Plaintiffs
Bush Seyferth PLLC
100 W. Big Beaver Rd., Suite 400
Troy, MI 48084
248.822.7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
Attorney for Plaintiffs
P.O. Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
Attorney for Plaintiffs
P.O. Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

Joseph T. Froehlich (P71887)
Joshua Booth (P53847)
John Fedynsky (P65232)
Christopher Allen (P75329)
Michigan Dep't of Attorney General
Assistant Attorneys General
Attorney for Defendants
State Operations Division
P.O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov
boothj2@michigan.gov
fedynksyj@michigan.gov
allenc28@michigan.gov

Michael R. Williams (P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC
Attorneys for Plaintiffs
151 S. Rose Street, Suite 707
Kalamazoo, MI 49007
269.820.4100
williams@bsplaw.com
dame@bsplaw.com

**DEFENDANT GRETCHEN WHITMER'S RESPONSE TO INTERVENOR'S
MAY 12, 2020 MOTION TO INTERVENE**

INTRODUCTION

Permitting intervention will unnecessarily complicate this matter by adding superfluous parties. The Proposed Intervenors' interests will be adequately represented by the existing litigants, and permitting intervention has the potential to unduly delay these expedited proceedings to the prejudice of the existing parties and the general public. Permissive intervention should be denied.

Proposed Intervenors are five Michigan-licensed attorneys who advance the same generalized and legally unfounded grievances presented by the Legislative Plaintiffs. There is no Michigan statute or court rule conferring a conditional right to intervene, and the applicants present no distinct claim or defense. Instead, the Proposed Intervenors merely echo the legal arguments of the Legislative Plaintiffs that have already been adequately presented to the Court. The arguments of the proposed intervenors are more appropriately considered by the Court as those of *amicus curiae*.

ARGUMENT

I. This Court should deny the motion for permissive intervention.

MCR 2.209 governs intervention and provides in pertinent part:

* * *

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a Michigan statute or court rule confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether

the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(C) Procedure. A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107. The motion must

(1) state the grounds for intervention; and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

Intervention is defined in Michigan’s civil law as “an action by which a third party becomes a party in a suit pending between others.” *Ferndale Sch Dist v Royal Oak Twp*, 293 Mich 1, 12 (1940) (citation and quotation omitted).

“The rule for intervention should be liberally construed to allow intervention where the applicant’s interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492 (1996). But intervention may be improper where it would have the effect of delaying the action or producing a multifariousness of parties and causes of action. *State Treasurer v Bences*, 318 Mich App 146, 150 (2016), quoting *Hill v LF Transp, Inc*, 277 Mich App 500, 507 (2008) (citations and quotation marks omitted).¹

Here, the Proposed Intervenors seek permissive intervention under MCR 2.209(B). But there is no suggestion that “a Michigan statute or court rule confers

¹ A trial court’s decision regarding a motion to intervene is reviewed for an abuse of discretion. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612 (2009). An abuse of discretion occurs when the trial court selects an outcome that is outside the range of principled outcomes. *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 153-154 (2017).

[upon them] a conditional right to intervene,” MCR 2.209(B)(1), and so the Proposed Intervenor must rely on MCR 2.209(B)(2). Yet, the Proposed Intervenor has not identified a specific “claim or defense” – a necessary condition of permissive intervention under MCR 2.209(B)(2). Moreover, the Proposed Intervenor has failed to comply with MCR 2.209(C)(2) because they have not accompanied their application to intervene with “a pleading stating the claim or defense for which intervention is sought.” Indeed, the Proposed Intervenor has not filed a “pleading” at all as the term is defined by the Court Rules.²

Instead, the Proposed Intervenor has simply filed a motion raising general grievances regarding the Governor’s executive orders that track the position of the Legislative Plaintiffs. While they may have a stake in the outcome of this case similar to that of any other resident of the State, what the Proposed Intervenor really seek is to be a voice in support of the Legislative Plaintiffs. This is a more appropriate role for *amicus curiae* than an intervenor.

² MCR 2.110 provides that the “term ‘pleading’ includes only:

- (1) a complaint,
- (2) a cross-claim,
- (3) a counterclaim,
- (4) a third-party complaint,
- (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and
- (6) a reply to an answer.

No other form of pleading is allowed.

In short, the Proposed Intervenors' interests will be adequately represented by the existing parties and permitting intervention will "unnecessarily produce a multifariousness of parties." *Neal*, 219 Mich App at 290. Further, permitting intervention has the potential to unduly delay these expedited proceedings to the prejudice of the existing parties and the general public. This case has been pending for little more than a week and a hearing on the merits is scheduled for tomorrow morning. This matter should not be delayed for the vanishing benefit of allowing the Proposed Intervenors to echo cumulative arguments that will be more than adequately covered by the Legislative Plaintiffs.

CONCLUSION AND RELIEF REQUESTED

Governor Whitmer respectfully requests that the Proposed Intervenors' motion to intervene be denied. Governor Whitmer does not object to the Court accepting the brief of the Proposed Intervenors for consideration as *amicus curiae*.

Respectfully submitted,

/s/ Joseph T. Froehlich
Joseph T. Froehlich (P71887)
Assistant Attorney General
Attorney for Defendant
State Operations Division
P.O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov

Dated: May 14, 2020

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,

Plaintiffs,

Case No. 20-000079-MZ

v.

Hon. Cynthia Diane Stephens

GRETCHEN WHITMER, in her
official capacity as Governor for the
State of Michigan,

Defendant.

Patrick G. Seyferth (P47475)
Stephanie A. Douglas (P70272)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
douglas@bsplaw.com
mckeever@bsplaw.com

Michael R. Williams (P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC
151 S. Rose St., Ste. 707
Kalamazoo, MI 49007
(269) 820-4100
williams@bsplaw.com
dame@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909

Joseph T. Froehlich (P71887)
Joshua Booth (P53847)
John Fedynsky (P65232)
Christopher Allen (P75329)
Michigan Dep't of Attorney General
Assistant Attorneys General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov
boothj2@michigan.gov
fedyndskyj@michigan.gov
allenc28@michigan.gov

*Attorneys for Defendant Governor
Gretchen Whitmer*

hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

*Attorneys for Plaintiffs Michigan House
of Representatives and Michigan Senate*

**THE MICHIGAN LEGISLATURE’S MAY 14, 2020 RESPONSE TO
[PROPOSED] INTERVENORS’ MAY 8, 2020 MOTION TO INTERVENE**

The Michigan House of Representatives and Michigan Senate (together, “the Legislature”) take no position on the motion to intervene that five attorneys have filed in this matter. The Legislature leaves it to the Court’s discretion. See *Mahesh v Mills*, 237 Mich App 359, 364; 602 NW2d 618 (1999) (“The decision whether to grant a motion to intervene is a matter within the trial court’s discretion.”).

The Legislature notes, however, that the issues that the proposed intervenors wish to raise are not “virtually identical” to those raised in the Legislature’s complaint. The Legislature is advancing interests unique to itself. Further, the Legislature would not support any party’s request to intervene if the request would delay this Court’s resolution of the Legislature’s pending motion. See *State Treasurer v Bences*, 318 Mich App 146, 150; 896 NW2d 93 (2016) (“[I]ntervention may not be proper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action.” (cleaned up)). All Michiganders deserve clarity on these issues as soon as possible.

Respectfully submitted,

By: /s/ Patrick G. Seyferth

Patrick G. Seyferth (P47475)
Stephanie A. Douglas (P70272)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
douglas@bsplaw.com
mckeever@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

By: /s/ Michael R. Williams

Michael R. Williams (P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC
151 S. Rose St., Ste. 707
Kalamazoo, MI 49007
(269) 820-4100
williams@bsplaw.com
dame@bsplaw.com

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

Attorneys for the Michigan House of Representatives and Michigan Senate

Dated: May 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2020, I filed the foregoing with the Clerk of the Court and served all counsel of record via email, in accordance with temporary court procedures.

By: /s/ Michael Williams
Michael R. Williams (P79827)

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN HOUSE OF
REPRESENTATIVES
and MICHIGAN SENATE,

Plaintiffs,

Case No. 20-000079-MZ

v.

Hon. Cynthia Stephens

GRETCHEN WHITMER, in her
official capacity as Governor for
the State of Michigan,

Defendant.

Patrick G. Seyferth (P47475)
Susan M. McKeever (P73533)
Bush Seyferth PLLC
100 W. Big Beaver Rd., Ste. 400
Troy, MI 48084
(248) 822-7800
seyferth@bsplaw.com
mckeever@bsplaw.com

Michael R. Williams(P79827)
Frankie A. Dame (P81307)
Bush Seyferth PLLC 151 S.
Rose St., Ste. 707
Kalamazoo, MI 49007 (269)
820-4100
williams@bsplaw.com
dame@bsplaw.com

Hassan Beydoun (P76334)
General Counsel
Michigan House of Representatives
PO Box 30014
Lansing, MI 48909
hbeydoun@house.mi.gov

William R. Stone (P78580)
General Counsel
Michigan Senate
PO Box 30036
Lansing, MI 48909
bstone@senate.michigan.gov

JOSEPH T. FROELICH (P 71887)
Attorney for Defendant
525 W Ottawa St
PO # 30736
Lansing, MI 48933-1067
(517)335-7573
Froehlichj1@michigan.gov

INTERVENORS' REPLY BRIEF IN SUPPORT OF MOTION TO INTERVENE

I. INTRODUCTION

Intervenors thank the "existing parties" for their responses to our motion. Although they seem to be of one mind that Intervenors' interests and opinions are adequately represented by their own efforts, or otherwise immaterial, this is not so apparent to us. Frankly, it seems neither has taken to heart our observations that: (1) over 35,000 licensed Michigan lawyers, many of whom can easily "socially distance" themselves from staff and visitors alike, and all of whom have clients who need and deserve their assistance, also have an interest in being free of unlawful and arbitrary strictures on our personal and professional activities; and (2) the Constitution and laws of Michigan exist in **at least** equal part to protect the private citizens and businesses of this State, not merely to employ "public officials" and divide political turf among them. They seem content to have this Court view this litigation as something akin to their personal property, as vying factions of the state's presumably omnipotent government. **Neither** seems to understand or take seriously that Intervenors, the practicing bar, and millions of citizens have clear interests in being free of unlawful and overreaching interference on the part of either or **both** of them.

We thus turn to specific reservations and objections voiced by the two "existing parties".

II. THE LEGISLATURE

Intervenors agree that the Legislature's principal concern seems to be its own institutional interests. We have closely viewed their pleadings, and are disappointed to see little in the way of concern for restoring **our** personal and professional liberties, much less those of countless Michigan citizens and businesses who are currently under more or less irksome conditions of house arrest.

As far as "prejudice or delay" go, we readily indicate that, if the "existing parties" and this Court agree that **our** personal, professional freedom should be promptly restored, subject to the obvious precautions of physical distancing, facial covering and the like, we might very well agree that the "existing parties" can proceed at their own pace to sort out their intra-mural debate.

Finally, we respectfully direct the attention of both "existing parties" and the Court to our analysis of the scope of the 1945 Act as being somewhat different, but more direct, than that of the Legislature. **Intervenors' Brief, pp. 7-10.** The 1945 Act makes no pretense of empowering any governor in the face of a disease, epidemic or pandemic for however long or short a time, as to however small or large a slice of Michigan. Therefore, it doesn't empower this one.

III. THE GOVERNOR

If the Governor's counsel have elsewhere addressed the immediately preceding paragraph, or the above noted pages of our brief, we are unaware. They have not served us with their pleadings responsive to the Legislature, and did not address this argument in their response to our motion.

We again invite the Governor, as noted above, to correct her prior oversights and set we lawyers free, as outlined above. It would enable us to return more fully to protecting and advancing the interests of our clients. It might also serve to make good on the Governor's repeated assertions that her EO's are not intended to slow the administration of justice in Michigan. As she and the Legislature may or may not know, very little is getting done in the trial courts of Michigan, and a frightful backlog is building.

We also note that we **did** append at least a draft Complaint, in our Appendices, which counsel seems to have overlooked. We apologize for its inartful typing. As all concerned are aware, we are currently deprived of the skilled services of our valued and capable clerical staffs.

Finally, we do not object to being treated as *amicus curiae*.

IV. CONCLUSION

Intervenors seek to intervene, subject to all the appropriate protocols. If it is the Court's preference to treat us as *amici*, we are satisfied to so serve.

May 14, 2020

Respectfully submitted by,

/s/ John F. Brennan, Esq.
JOHN F. BRENNAN, ESQ. (P26162)
Pro se
24001 Greater Mack Ave
Saint Clair Shores, MI 48080-1471
(586) 778-0900
brennanj@lawyermichigan.us

/s/ Mark Bucchi, Esq.
MARK P. BUCCHI, ESQ. (P32047)
Pro se
2855 Coolidge Hy. Ste. 203
Troy, MI 48084
(248)282-1150
mbucchi@novakbucchi.com

/s/ Samuel H. Gun, Esq.
SAMUEL H. GUN, ESQ. (P29617)
Pro se
2057 Orchard Lake Rd
Sylvan Lake, MI 48320-1746
(248) 335-7970
gunneratlaw@comcast.net

/s/ Martin Leaf, Esq.
MARTIN LEAF, ESQ. (P43202)
Pro se
19641 Mack Ave
Grosse Pointe Woods, MI 48236-2535
(248) 687-9993
leafmartin@gmail.com

/s/ Eric Rosenberg, Esq.
ERIC ROSENBERG, ESQ. (P75782)
25899 W 12 Mile Rd Ste 200
Southfield, MI 48034-8342
Phone: [248-821-9034](tel:248-821-9034)
Email: EJRlaw01@gmail.com

AFFIDAVIT OF SERVICE

The undersigned affirms that this pleading has been served on all counsel of record by email, in accordance with the Court's temporary Covid-19 related orders.

May 8, 2020

/s/ Mark Bucchi, Esq.
MARK BUCCHI, ESQ. (P32047)